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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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:

UNITED STATES OF AMERICA

CR-13-607

-against- :

United States Courthouse  
Central Islip, New York

PHILLIP A. KENNER and  
TOMMY C. CONSTANTINE,

Defendants. :

June 29, 2015  
9:30 a.m.

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TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE JOSEPH F. BIANCO  
UNITED STATES DISTRICT JUDGE, and a jury

APPEARANCES:

For the Government:

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Acting United States Attorney  
100 Federal Plaza  
Central Islip, New York 11722  
BY: JAMES MISKIEWICZ, ESQ.  
SARITHA KOMATIREDDY, ESQ.  
Assistant United States Attorney

For the Defendants:

HALEY, WEINBLATT & CALCAGNI  
One Suffolk Square  
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Islandia, NY 11749  
BY: RICHARD HALEY, ESQ.  
For Mr. Kenner

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For the Defendants:

LARUSSO & CONWAY  
300 Old Country Road  
Mineola, NY 11501  
BY: ROBERT LARUSSO, ESQ.  
For Mr. Constantine

ANDREW L. OLIVERAS, ESQ.  
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For Mr. Constantine

Court Reporter: Mary Ann Steiger  
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Proceedings recorded by mechanical stenography.  
Transcript produced by computer.

Mary Ann Steiger, CSR  
Official Court Reporter

1 THE CLERK: All rise.

2 THE COURT: Please be seated.

3 (Case called, appearances noted.)

4 MR. HALEY: Your Honor, if I may, briefly?

5 First of all, I thank the Court for the Court's  
6 indulgence.

7 Mr. Miskiewicz gave me an affidavit for my  
8 client to review that was lengthy. And the thought was he  
9 would review it now, rather than taking that time on the  
10 witness stand. We have seen the time that goes by as  
11 Mr. Kenner reviews documents. That will save time.

12 There is one final matter, Judge, another  
13 matter.

14 Towards the end of or during the course of  
15 Mr. Miskiewicz' recross of Mr. Kenner, there was a  
16 question asked about a grand jury subpoena that he  
17 received from the Southern District of New York, and then  
18 testimony about whether that subpoena was later withdrawn.

19 Your Honor may recall that it was left up in the  
20 air as to whether such a document had even existed. I did  
21 provide Mr. Miskiewicz with both the subpoena as well as  
22 the letter withdrawing the subpoena.

23 I bring it to the Court's attention because we  
24 did not provide that in Rule 26.2 discovery. I didn't  
25 know it was going to come up. I assumed the government

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1 would have been in possession of that.

2 I would, Judge, for purposes of not having to  
3 re-redirect on that issue, simply ask that those documents  
4 be marked as Kenner exhibits because they were referred to  
5 in the recross of my client.

6 THE COURT: That's fine.

7 Any objection to that?

8 MR. MISKIEWICZ: No, your Honor, other than I  
9 would note that the subpoena was from the Eastern District  
10 issued simultaneously with the Southern District's  
11 investigation. We're talking apples and oranges here, but  
12 we have no objection.

13 THE COURT: What are the documents?

14 MR. HALEY: Judge, it would be, and thank you  
15 for that clarification, Mr. Miskiewicz, it would be -- the  
16 subpoena could be marked as 239, and then the letter to  
17 Ron Richards from the United States Attorney for the  
18 Eastern District of New York, dated July 17, 2009,  
19 regarding the service of the subpoena, I would ask that be  
20 marked as Kenner Exhibit 240.

21 And, finally, the letter regarding please  
22 disregard the Phil Kenner grand jury subpoena sent on July  
23 17, 2009, and have that marked as Kenner Exhibit 241.

24 Thank you, Judge.

25 THE COURT: Okay.

1           Why don't you introduce those at the beginning  
2 of your redirect.

3           MR. HALEY: Yes, and my hope is to keep my  
4 redirect small.

5           THE COURT: You have no objection?

6           MR. LARUSSO: No, I don't, Judge.

7           Judge, I would like to bring to the Court's  
8 attention a little bit more information on this document  
9 that we needed some time to look at.

10           In part, it alleges my client was involved in a  
11 bankruptcy fraud. It's an affidavit of Mr. Kenner's that  
12 was introduced in Mr. Constantine's bankruptcy proceeding.  
13 I believe it was 2012.

14           These allegations obviously, Judge, have not  
15 been brought out to date and I don't understand the  
16 relevancy of any of this information relative to a  
17 possible bankruptcy fraud that my client was involved in.

18           First, we were never advised that this was going  
19 to be part of the case and we've taken pains to avoid  
20 bringing out other bad acts, such as I think most of the  
21 Las Frailes situation to be one of them.

22           I would like the Court to look at these two  
23 sections that I marked. I'm not asking the Court to read  
24 it all. If I may?

25           MR. MISKIEWICZ: Your Honor, I can maybe short

1 circuit this.

2 My intention is not to offer the entire  
3 affidavit or any excerpt.

4 My purpose in showing Mr. Kenner this is  
5 directly in rebuttal to questions raised by Mr. LaRusso  
6 about the sale of some private stock of Eufora stock in or  
7 about 2009.

8 It's a rather lengthy affirmation by Mr. Kenner.  
9 Nowhere does he indicate that there was any such deal and  
10 I intend to bring that out. That's why we gave it to him.

11 THE COURT: You're not arguing bankruptcy fraud  
12 against Mr. Constantine from that, are you?

13 MR. MISKIEWICZ: No.

14 There are allegations in the affirmation in  
15 which he indicates he made something like close to a  
16 million dollars available to Mr. Constantine after  
17 repeated dire requests of funding of Eufora and I think  
18 that's in evidence. It's probably more than a million  
19 dollars by way of the various investors.

20 And then I'm going to ask him has he had an  
21 opportunity to read the affirmation and where is it that  
22 he says there was some sort of a sale or private sale of  
23 stock. It's nowhere. That's it.

24 MR. LARUSSO: It appears to me, Judge, that's  
25 within the parameters of proper recross or re-recross.

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1 I'm just concerned about all these other allegations.

2 THE COURT: Yes. If anyone intends to question  
3 or argue some type of bankruptcy fraud by Mr. Constantine,  
4 before you do so I would want to hear what it is you're  
5 seeking to elicit because we have been doing everything we  
6 can on keeping the jury focused on what the issues are in  
7 the case.

8 MR. HALEY: I'll be the proverbial fly in the  
9 ointment in this respect, Judge.

10 That affidavit, to the extent the government  
11 asks those focused questions of my client, in my view  
12 that's going to give this jury the wrong impression  
13 because I do believe that from my perspective there's  
14 going to be questions about that affidavit and under the  
15 rule of completeness I would ask that the entire affidavit  
16 be admitted into evidence.

17 Your Honor, let me say this. It has been our  
18 position and indeed evidence has been introduced during  
19 the course of the trial that when Tommy Constantine filed  
20 the bankruptcy petition in the District Court, that his  
21 bankruptcy petition was false insofar as he failed to list  
22 the ownership interest of various hockey player clients,  
23 which ownership interest had been acquired by those hockey  
24 player clients through the stock transfers that have been  
25 testified to at great length.

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1           It is our position, Judge, that the bankruptcy  
2 proceeding, at least as far as Mr. Constantine's failure  
3 to acknowledge the ownership interest of those hockey  
4 player clients, was in that respect false.

5           As a matter of fact, my client, there's been  
6 testimony to that effect, assisted various hockey player  
7 clients in bringing a claim in that bankruptcy proceeding  
8 as claimants that, yes, we are creditors of the company.  
9 As a matter of fact, Phil Kenner did it. There's been a  
10 lot of testimony in that respect.

11           So I'm of the view, Judge, that I cannot simply,  
12 based upon my theory of the case, consent to that question  
13 being asked of my client in that fashion without then  
14 exploring the full content of the affidavit and I may very  
15 well look then to introduce the full content of the  
16 affidavit.

17           THE COURT: I don't know. What does the rest of  
18 the affidavit have to do with whether or not there's a  
19 private stock interest?

20           MR. HALEY: May I see the affidavit, Judge?

21           THE COURT: Yes.

22           MR. LARUSSO: May I? I gave the Court my copy.  
23 I don't know if there's another one available.

24           THE COURT: Yes.

25           (Pause in proceedings.)



1 MR. HALEY: Your Honor?

2 THE COURT: Hold on one second.

3 (Pause in proceedings.)

4 MR. HALEY: Judge, I may save the Court time.

5 I will, now I have an understanding that this  
6 was the affidavit that Mr. Kenner filed with reference to  
7 his adverse proceeding as distinct from the affidavits  
8 that were filed by others where he assisted them in filing  
9 them. So if that's the question, and the only question of  
10 Mr. Kenner, I withdraw my objection.

11 THE COURT: Good. I agree.

12 MR. HALEY: Thank you, Judge.

13 THE COURT: Alternate number 6 obviously is here  
14 and he called on Friday. I don't know exactly what  
15 happened, but the situation with his daughter is resolved  
16 to the extent he can continue to serve.

17 I did receive the government's letter regarding  
18 objections they have to certain exhibits for  
19 Mr. D'Ambrosio, but he's not your first witness. Who is  
20 your first witness?

21 MR. LARUSSO: I was going to call Mr. Foster.  
22 He missed his flight. He's not coming in until tonight.  
23 Mr. D'Ambrosio stood around, so he is the witness I have  
24 to call.

25 THE COURT: What about to Mr. Semple?

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1 MR. LARUSSO: He agreed to come back. He's  
2 flying in tonight. He's available tomorrow with the  
3 Court's permission. His family is on vacation. He drove  
4 down to Coronado. He's willing to drive back tonight.  
5 Can I put him on first thing in the morning? It's a long  
6 examination.

7 THE COURT: That's fine. Is there a list  
8 somewhere as to who the John Does are in the indictment?

9 MS. KOMATIREDDY: Yes.

10 THE COURT: I want to substitute their names in  
11 the indictment so the jury is not confused.

12 MR. LARUSSO: Your Honor, I don't know if the  
13 government has another copy. Do you mind if I have that  
14 back? Thank you.

15 THE COURT: Let's bring in the jury.

16 MR. HALEY: Your Honor, Mr. Kenner should retake  
17 the stand?

18 THE COURT: Yes.

19

20 PHIL KENNER,

21 called as a witness, having been previously  
22 duly sworn, was examined and testified further  
23 as follows:

24

25 THE CLERK: All rise.

1 (The jury is present.)

2 THE COURT: Please be seated.

3 Good morning, members of the jury.

4 ALL JURORS: Good morning.

5 THE COURT: It's good to see you this morning.

6 I hope you all had a good weekend.

7 And I appreciate alternate number 6 giving us a  
8 call on Friday letting us know he addressed the situation  
9 with his daughter and I'm glad that's okay and he's able  
10 to continue with the trial.

11 So, as you know, we left off with Mr. Kenner on  
12 recross examination by the government so we will continue  
13 from that point. I understand there's not much more to  
14 go, and Mr. LaRusso has some recross as well and some  
15 additional redirect by Mr. Haley.

16 I remind you you're still under oath,  
17 Mr. Kenner.

18 THE WITNESS: Yes, sir.

19 THE COURT: Go ahead, Mr. Miskiewicz.

20 MR. MISKIEWICZ: Thank you, your Honor.

21

22 RECROSS-EXAMINATION

23 BY MR. MISKIEWICZ:

24 Q. Mr. Kenner, during Mr. LaRusso's cross-examination  
25 and perhaps elsewhere, you testified about a number of

**Kenner - Recross/Miskiewicz**

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1 transactions involving the sale of Eufora shares or equity  
2 interest and I believe the phrase you used was private  
3 stock.

4 Do you recall answering questions along those  
5 lines?

6 A. Yes, sir, I do.

7 Q. Specifically, do you recall saying that your  
8 understanding was that Mr. Constantine was selling shares  
9 of Eufora to various investors through essentially private  
10 sales of his own interests, correct?

11 A. Yes, his own stock that he owned.

12 Q. Now, prior to resumption of testimony, did you have  
13 an opportunity to read a declaration that you filed under  
14 oath in the United States Bankruptcy Court in the District  
15 of Arizona?

16 A. Yes, sir, I was able to briefly review it.

17 Q. Okay. And my question to you, sir, is this:

18 In that declaration you were, in essence, filing  
19 in connection with a bankruptcy petition in Arizona filed  
20 by Mr. Constantine, correct?

21 A. I was filing an adverse proceeding in  
22 Mr. Constantine's bankruptcy on my behalf.

23 Q. And that was in or about 2013 that you filed an  
24 affidavit or -- I'm sorry -- declaration adverse to  
25 Mr. Constantine's petition for bankruptcy?

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1 A. Yes, sir, I believe that's when I filed the  
2 declaration.

3 Q. In that declaration, which goes on for a number of  
4 pages, you did discuss specifically Eufora and you're  
5 directing investors or third-party individuals to invest  
6 large sums of money in Eufora, correct?

7 A. I don't recall that specifically in the declaration.

8 Q. Okay.

9 Well, do you recall indicating at some point  
10 that you forwarded over a million dollars to Eufora by way  
11 of either your own contributions or investors?

12 A. My own contributions I believe it was referencing.

13 Q. And, sir, having read the declaration, is it not  
14 true, sir, that nowhere did you make reference to any  
15 private sale of stock by Mr. Constantine to others?

16 A. That wasn't the purpose of the declaration.

17 It was a declaration specific to my adverse  
18 proceeding to his bankruptcy filing.

19 Q. My question to you, sir, is in your declaration which  
20 you signed and filed in federal bankruptcy court, did you  
21 say anything in there about a private sale of stock by  
22 Mr. Constantine to others?

23 A. I think I only referenced the transaction between  
24 Mr. Constantine and myself.

25 Q. You were also asked on cross-examination a series --

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1 and also reopening of direct, questions with respect to  
2 Sergei Gonchar.

3 You were asked a series of questions about the  
4 Stolper lawsuit.

5 Do you recall being asked questions by Mr. Haley  
6 and Mr. LaRusso?

7 A. I believe I do recall a number of questions. I don't  
8 remember specifically who was asking them at this moment.

9 Q. All right.

10 And, also, do you recall indicating that in sum  
11 and substance your role was to attempt to buyout the  
12 Neptune loan that was encumbering Eufora; do you recall  
13 that testimony?

14 A. I don't think I referenced my role was to buyout the  
15 loan.

16 I think I referenced that part and parcel to  
17 Mr. Stolper's efforts as a group, the intention was,  
18 through his group efforts, to buyout Mr. Constantine's --  
19 excuse me -- Mr. Nerguzian's loan from Neptune to Eufora.

20 Q. You were also asked a series of questions about that  
21 tape you made or a recording you made in Home Depot.

22 And specifically do you recall the numerous  
23 references to Mr. Constantine indicating to you that he  
24 requested that you stop the Stolper lawsuit?

25 A. Yes, I do recall his requests.

Kenner - Recross/Miskiewicz

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1 Q. And also his indication to you that he was well aware  
2 that you were -- or, in his opinion, well aware that you  
3 were in fact, as he put it, the puppet master of that  
4 lawsuit.

5 Do you recall those statements and the questions  
6 that Mr. LaRusso asked you about the Home Depot tape?

7 A. I do recall Mr. Constantine's comments referencing me  
8 as the puppet master.

9 I do not recall, as I sit here today,  
10 Mr. LaRusso's questions related to that. I apologize.

11 Q. Well, in fact, sir, let me ask you this.

12 Tyson Nash was one of the witnesses who  
13 testified here, correct?

14 A. Yes, sir, I recall Mr. Nash's testimony.

15 Q. At or about just a little bit before the making of  
16 the Home Depot recording, do you recall Mr. Nash asking  
17 you via e-mail for documentation of various investments  
18 that he had made?

19 A. Not specifically.

20 Q. I'm going to show you what's been marked as  
21 Government's Exhibit 104 for identification.

22 (Exhibit handed.)

23 (Pause in proceedings.)

24 Mr. Kenner, my questions initially are is that a  
25 series of e-mails back and forth between you and Tyson

**Kenner - Recross/Miskiewicz**

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1 Nash in or about July of 2010?

2 A. They appear to be.

3 MR. MISKIEWICZ: The government moves the  
4 admission of 104.

5 MR. HALEY: May we approach, Judge?

6 THE COURT: Yes.

7 (Continued on next page.)

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Kenner - Recross/Miskiewicz

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1 (The following takes place at sidebar.)

2 THE COURT: Okay.

3 MR. HALEY: Apart from the fact that it's beyond  
4 the scope of redirect or recross, that's not really my  
5 primary objection.

6 My primary objection is this refers to the  
7 failure of my client to deliver documents that follow in  
8 the four corners of this indictment essentially in  
9 connection with the Stolper lawsuit, or the Hawaiian lines  
10 of credit, or Eufora, or anything of that nature. I don't  
11 see any relevance and materiality.

12 It seems to suggest that somehow he's refusing  
13 to give documents generally to Mr. Nash. This simply  
14 talks about Las Frailes, and my memory is we stayed away  
15 from it as 404(b) notification.

16 I understand he's being cross-examined and can  
17 be cross-examined on matters that have materiality. I  
18 don't see this as having any materiality and relevance on  
19 that score.

20 MR. MISKIEWICZ: The e-mail string stands for  
21 the proposition that at this stage, contrary to what he  
22 described, he's very much a part of the Stolper lawsuit.

23 He was trying to find out who, in his words, the  
24 rat or spy was. We now know the spy apparently was  
25 Mr. Gonchar who recorded a meeting with the Stolper

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1 plaintiffs.

2 And it also goes -- I have no objection to  
3 redacting the reference to Las Frailes. It does go to how  
4 he is both intimately involved and also resistant to  
5 turning over any records.

6 MR. HALEY: If I may, Judge, this is the  
7 paragraph I'm referring to that I object to primarily.

8 If the government just wants the first page of  
9 the e-mail, that's different.

10 THE COURT: I think there's a reference to the  
11 rat up here.

12 MR. HALEY: I didn't pick up the rat reference.  
13 This is what I object to.

14 THE COURT: Can the government redact out this?

15 MR. MISKIEWICZ: Sure.

16 MR. HALEY: Thank you, Judge.

17 MR. LARUSSO: Mr. Miskiewicz said Mr. Gonchar  
18 testified that he recorded the conversation. He didn't.  
19 The testimony was that --

20 THE COURT: He left an open mike.

21 (Continued on next page.)  
22  
23  
24  
25

**Kenner - Recross/Miskiewicz**

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1 (The following takes place in open court.)

2 THE COURT: Members of the jury, there's one  
3 portion of the e-mail chain that's not relevant so it's  
4 going to be redacted.

5 With that understanding, Government's Exhibit  
6 104 is admitted.

7 (Government Exhibit 104 in evidence.)

8 BY MR. MISKIEWICZ:

9 Q. Very briefly, Mr. Kenner.

10 In this series of e-mails back and forth between  
11 you and Mr. Nash regarding the request for paperwork,  
12 isn't it true, sir, that on that day in request or in  
13 response to the request for paperwork, you wrote to  
14 Mr. Nash, you help me find the rat. I'll make sure we get  
15 the docs. Deal?

16 You wrote that, didn't you?

17 A. Yes, sir, I did.

18 Q. You wrote that?

19 A. Yes, sir, I did.

20 Q. Lastly, I believe you testified towards the end of  
21 last week about the nature of the default on all of the  
22 players' lines of credit.

23 Do you recall -- you testified that as part of  
24 your review of discovery, there were a great many other  
25 portions of recordings that were not played by the

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1 government, correct?

2 A. I apologize. I didn't follow that statement or  
3 question.

4 Q. In your direct examination and cross-examination you  
5 did make a point that there were many hours of recordings  
6 between you and/or Kristin Peca and/or others that were  
7 not played, correct?

8 A. I don't recall that testimony, but I do remember  
9 reviewing that in discovery, many hours of recordings.

10 Q. I believe it was your testimony that the decision to  
11 allow all of the lines of credit to go into default was a  
12 collective decision.

13 Do you recall testifying along those lines?

14 A. Yes, sir.

15 I spoke to each of the individual clients of  
16 mine, each of the hockey players, to discuss that prior to  
17 allowing them to go into default.

18 MR. MISKIEWICZ: I believe we have a stipulation  
19 with respect to Government's Exhibit 506 A.

20 MR. HALEY: Is that the transcript?

21 MR. MISKIEWICZ: And the recording.

22 MR. HALEY: We do, your Honor, at least I  
23 stipulate to having it played.

24 MR. LARUSSO: No objection, Judge.

25 THE COURT: 506 is the transcript or the

Kenner - Recross/Miskiewicz

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1 recording?

2 MR. MISKIEWICZ: 506 A.T would be the  
3 transcript. 506 A is the actual recording. The  
4 transcript will appear on the screen.

5 THE COURT: This portion that's reflecting the  
6 transcript of 506 A is admitted.

7 And the transcript, members of the jury, is just  
8 an aid and the previous instruction I gave you applies  
9 here.

10 MR. HALEY: Judge, I apologize. I also have 506  
11 B which is the transcript as well.

12 MR. MISKIEWICZ: I was going to get to that  
13 offer. I offer that as well.

14 THE COURT: Okay. Any objection to that?

15 MR. HALEY: No. I think we can do it in  
16 sequence, Judge.

17 MR. LARUSSO: No objection.

18 THE COURT: 506 B is another portion of the  
19 tape?

20 MR. MISKIEWICZ: Yes.

21 THE COURT: And 506 B.T --

22 MR. MISKIEWICZ: Is the transcript.

23 THE COURT: 506 B.T is admitted as an aid. 506  
24 B is admitted as well.

25 (Government Exhibits 506 A, 506A.T and 506 B and

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1 506 B.T in evidence.)

2 MR. MISKIEWICZ: Playing the recording, 506 A.

3 (Tape played.)

4 (Tape concluded.)

5 BY MR. MISKIEWICZ:

6 Q. Mr. Kenner, that was your voice, correct?

7 A. Yes, sir, that was me talking to Kristin Peca.

8 MR. MISKIEWICZ: Now, we're playing and  
9 displaying the transcript as an aid for government's 506

10 B.

11 (Tape played.)

12 (Tape concluded.)

13 BY MR. MISKIEWICZ:

14 Q. Again, Mr. Kenner, that is your voice, correct?

15 A. Yes, sir, that was me speaking to Kristin Peca.

16 MR. MISKIEWICZ: Thank you.

17 No further questions.

18 THE COURT: Mr. LaRusso.

19 MR. LARUSSO: Thank you, your Honor.

20

21 RECROSS-EXAMINATION

22 BY MR. LARUSSO:

23 Q. Good morning, Mr. Kenner.

24 A. Good morning, sir.

25 Q. I believe it was on examination by Mr Miskiewicz you

Kenner - Recross/LaRusso

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1 were talking about the Centrum loan.

2 Do you recall the testimony particularly in  
3 regards -- can you make that out or is it still blurry?

4 A. I can't see it in front of me.

5 Q. I don't know if it can get any better. Just bear  
6 with me a minute.

7 I believe this was government chart number 5.  
8 We introduced a similar or a copy of the chart with the  
9 addition of the July 27th, 2005, \$290,000.

10 Do you recall testimony regarding this?

11 A. In sum or substance I do.

12 Q. I believe there was also questions about the bank  
13 statement of Constantine Management Group dealing with the  
14 transactions that are reflected in this chart,  
15 particularly ones going from Ula Makika to  
16 Mr. Constantine, CMG, and the 290,000 back to you.

17 A. Yes, sir, I do recall that.

18 Q. And I believe you had at some point requested an  
19 opportunity to look at the entire bank statement; is that  
20 correct?

21 A. Yes, sir, I did.

22 Q. Let me show you what's been marked for identification  
23 as C 311.

24 (Exhibit handed.)

25 MR. LARUSSO: Your Honor, at this time, I would

Kenner - Recross/LaRusso

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1 like to offer if I can Defendant's Exhibit C 311.

2 MR. MISKIEWICZ: No objection. I believe it's  
3 already in evidence.

4 MR. LARUSSO: It may be a Government Exhibit as  
5 well, your Honor.

6 MR. HALEY: Doubly no objection.

7 THE COURT: C 311 is admitted.

8 (Defense Exhibit C 311 in evidence.)

9 BY MR. LARUSSO:

10 Q. Mr. Kenner, this is the -- it seems to be either a  
11 little hazy or it's my glasses.

12 Can you make that out?

13 A. I'm having difficulty as well. Is there a copy I can  
14 review?

15 MR. HALEY: May I approach the witness, Judge,  
16 and give him my copy?

17 THE COURT: Yes.

18 MR. LARUSSO: Thank you, Mr. Haley.

19 BY MR. LARUSSO:

20 Q. Mr. Kenner, this is the bank statement for  
21 Constantine Management Group covering the period July '05,  
22 July 1st, '05, to July 31st, '05; is that correct?

23 A. Yes, sir, it is.

24 Q. Take a look so you have had a chance to examine the  
25 entire statement.



**Kenner - Recross/LaRusso**

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1 MR. HALEY: Mr. LaRusso, only a portion is up on  
2 the screen for the jury.

3 BY MR. LARUSSO:

4 Q. While you're looking at it, I'm going to put the  
5 second page up.

6 A. Yes, sir, I reviewed it.

7 Q. Mr. Kenner, my question is, looking at the entire  
8 statement, can you tell us what your recollection is about  
9 this?

10 And I'll show it to the jury, the \$650,200  
11 payment to CMG on July 21st of '05, and July 22nd, and  
12 then the \$290,000 return that you see at the bottom of the  
13 statement on July 27 to Ula Makika.

14 A. Yes, sir.

15 Q. Could you explain that for us, please?

16 A. Yes, sir.

17 To the best of my recollection the payment for  
18 \$350,000 on July 22nd was the amount that pursuant to the  
19 funding consulting agreements I believe Mr. Constantine  
20 had with our entities in Hawaii, there was a payment due.

21 And there was a miscommunication I believe with  
22 the bank who I had been asking to transfer some of that  
23 money to Mr. Constantine, and I don't recall if they asked  
24 me to send a second fax to them to request it or a second  
25 e-mail that they hadn't received it at that particular

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1 time, my request to transfer to Mr. Constantine.

2 But somewhere in the neighborhood of three to  
3 four days later I was contacted by the bank, I think if I  
4 recall, suggesting that there may have been a mistake and  
5 they wired both 300 and \$350,000.

6 So I let Mr. Constantine know. I asked him to  
7 return the 300,000 because it was supposed to be a  
8 \$350,000 payment, and he ultimately returned 290,000 and I  
9 think we just deducted the extra 10,000 perhaps off the  
10 next payment.

11 Q. Do you see the July 27, \$290,000 from E. Moreau?

12 A. Yes, sir, I do.

13 Q. What's that in reference to?

14 A. That was a deposit that Mr. Moreau had put down with  
15 Mr. Constantine on a separate deal they had done at the  
16 Palms hotel which ultimately became the two Palms units  
17 that we referred to in the Global Settlement Fund as being  
18 contributed by Mr. Constantine and myself at that point in  
19 time.

20 Q. And would it be fair to say that based upon your  
21 review of the entire statement, there is no conspiracy to  
22 defraud anyone in regards to the transaction that we're  
23 talking about here; is that correct?

24 A. That is correct, sir.

25 MR. MISKIEWICZ: Objection.

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1 THE COURT: Overruled.

2 BY MR. LARUSSO:

3 Q. Mr. Kenner, do you remember testifying in sum and  
4 substance that Mr. Peca had sent you a text message  
5 regarding the purchase of the Neptune or Eufora loan and  
6 that he had no prior knowledge of it?

7 A. I believe that I received text messages from Mr. Peca  
8 regarding his willingness or desire to be part of the loan  
9 buyout group in spite of his testimony to the opposite.

10 I think, I believe, I also received a text  
11 message from Bryan Berard confirming that Jay McKee would  
12 join the Michael Stolper effort only if he could  
13 contribute to the loan buyout proceedings.

14 And I believe Mr. Berard and Mr. McKee also  
15 testified they had no knowledge in this courtroom of those  
16 loan proceedings as well.

17 Q. Let me show you what's been marked for identification  
18 as C 326.

19 Can you identify this document for us, please?

20 A. Yes, sir.

21 This is the July 14, 2010, text messages, two of  
22 them, that I received from Michael Peca with respect to  
23 what I just testified about, his desire to be part of the  
24 loan buyout, and that if -- he actually refers to it and  
25 suggests if he's not part of it, there might be a

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1 lynching.

2 I guess he's referring to the fact he would be  
3 very upset about it.

4 And he asked if there's -- if other money has  
5 already been collected, and whose money previously was  
6 sitting in escrow, and that previous money I believe was  
7 from Mr. Berard, Mr. Kaiser and myself.

8 MR. LARUSSO: Your Honor, I apologize. I should  
9 have interrupted. May I move this into evidence as C 326.

10 MR. MISKIEWICZ: No objection.

11 MR. HALEY: No objection.

12 THE COURT: 326 is admitted.

13 (Defense Exhibit 326 in evidence.)

14 BY MR. LARUSSO:

15 Q. I'm going to leave C 312 with you for just a moment.

16 And just display to the jury, this is the text  
17 message you were referring to in your testimony a few  
18 minutes ago; is that correct?

19 A. The one that you just showed me; yes, sir.

20 Q. Yes.

21 And the upper portion, who is texting that  
22 portion? That is, if not all willing members get a chance  
23 to be part of the loan buyout, means more percent, there  
24 may be a lynching, FYI?

25 A. That was Mr. Peca texting me on July 14, 2010.

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1 Q. What did you understand him to be texting to you in  
2 this message?

3 A. This was pursuant to meetings that Mr. Stolper had  
4 held with each of the members of the investigation group  
5 which included Mr. Peca, Mr. Berard, Mr. Ranford,  
6 Mr. Rucchin, Mr. McKee.

7 All of them had been notified that one of the  
8 main intentions was to buyout the loan from Neptune.

9 And at this point, on or about July 14, I think  
10 Mr. Peca, in addition to Mr. McKee, were very adamant they  
11 wanted to put up additional money to receive additional  
12 percentage ownership in Eufora at that time.

13 Q. Your response is; has money been collected already?

14 A. No.

15 You see where it says read, it means I received  
16 those. It was his follow-up to me about two minutes and  
17 95 seconds later.

18 It's probably a second thought of Mr. Peca. Has  
19 money been collected already? If not, whose money is  
20 sitting in escrow?

21 Because during one of the calls either  
22 Mr. Berard who's heading up a lot of that loan buyout  
23 effort or Mr. Stolper had represented there was already  
24 approximately \$250,000 sitting in the lawyer's trust  
25 account for that loan buyout purpose.

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1 Q. Now, do you remember another hockey player by the  
2 name of DeVries was involved in contributing to the  
3 buyout?

4 If you need to, I left before you an exhibit  
5 just to review for your refreshing your recollection.  
6 Just read it to yourself and after reading it if it  
7 refreshes your recollection regarding Mr. DeVries'  
8 participation, then tell us what you remember and if you  
9 don't tell us that as well.

10 A. I recall the conversations in and around this point  
11 in time.

12 A number of my clients had been notified that  
13 prior to this Mr. Constantine had sold some of his private  
14 stock in Eufora, and that subsequent to that, between I  
15 believe December 29 of 2008, and May 24, 2009, Mr. Gaarn  
16 had sold some stock.

17 And as the period of time continued for the next  
18 year until May of 2010, I do recall a number of my  
19 clients, including Mr. DeVries, desiring to buy additional  
20 Eufora stock and wanting to know if anyone was interested  
21 in selling their private stock and/or if there were any  
22 other potential to help buyout some of the loan  
23 proceedings.

24 Q. Does that document refresh your recollection that  
25 Mr. DeVries, and possibly Mr. Gonchar, were looking to

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1 contribute not to buyout the loan as the hostile group is  
2 doing, but to buyout the loan that the company was trying  
3 to get from Mr. Nerguzian and Neptune?

4 Do you understand the question?

5 A. If you don't mind asking it again. I'll listen to  
6 the question and then read that.

7 Q. Do you remember testimony from Mr. Gonchar that he  
8 contributed money in an effort to buyout the loan and buy  
9 Eufora, and not the group that was seeking to do it  
10 hostile?

11 A. Yes, sir, I do recall that.

12 Q. Does this refresh your recollection that Mr. DeVries  
13 was, like Mr. Gonchar, contributing monies to buyout the  
14 loan not with the hostile group, but with the Eufora  
15 group?

16 A. I believe Mr. DeVries and Mr. Peca were interested in  
17 doing it prior to Mr. Stolper's efforts, that is correct.

18 Q. A few questions about Mr. Ranford.

19 A. Yes, sir.

20 Q. Would it be true that his primary interests were, or  
21 one of his primary interests was expressed in regards to  
22 Eufora that he wanted to be part of the Avalon airport  
23 project as well?

24 A. Yes, sir, that's correct.

25 Q. Did he tell you that he also was interested in

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1 commercial real estate and he proposed his involvement in  
2 Avalon because there was over 2.5 million in equity?

3 MR. MISKIEWICZ: Objection.

4 THE COURT: Overruled.

5 A. Mr. Ranford was quite interested in the fact that the  
6 Avalon buildings were worth a significant amount more than  
7 the debt that was on the building at that point in time.

8 Q. Do you remember, was there any discussion about what  
9 that equity interest was in the Avalon Park at the time?

10 A. I do recall discussions regarding the significance of  
11 the equity that was held in the buildings at that time,  
12 and that was one of the appealing elements to a number of  
13 the individuals, but specifically Mr. Ranford I do recall  
14 that.

15 Q. This is during the period of the Global Settlement  
16 Fund?

17 A. Yes, sir, that's correct.

18 Q. And, likewise, this is the same project, the Avalon  
19 Park, that Mr. Nolan and Mr. Juneau were willing to walk  
20 away from him; is that correct?

21 MR. MISKIEWICZ: Objection.

22 THE COURT: Overruled. You can answer that.

23 A. Yes, sir, that is correct.

24 Q. And isn't it true that Mr. Ranford's money that he  
25 invested went to the Avalon Park?



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1 MR. MISKIEWICZ: Objection.

2 THE COURT: Overruled. You can answer it.

3 A. Yes, sir.

4 If I recall correctly, I believe a significant  
5 portion of Mr. Ranford's money went directly to Avalon as  
6 part of the global settlement contribution.

7 Q. Now, I believe you were asked a number of questions  
8 about the efforts by Mr. Constantine to secure funding for  
9 the Hawaiian projects.

10 I believe there was cross-examination about an  
11 individual by the name of Mr. Losch.

12 Do you recall that?

13 A. Kenner Losch and his partner David Dewar.

14 Q. And you remember the efforts Mr. Constantine and you  
15 made in an effort to try and get the funding for the  
16 Hawaiian project from both Mr. Losch and his partner; is  
17 that right?

18 A. Mr. Constantine handled 90 percent of the initial  
19 efforts with them until he thought it was at a point in  
20 time that it was appropriate for me to sit in and begin  
21 meeting with Mr. Losch and Mr. Dewar.

22 Q. And do you recall that in the efforts to find the  
23 funding from Mr. Losch and his partner, it took or there  
24 was at least a substantial period of time discussing with  
25 them that possibility; is that correct?

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1 MR. MISKIEWICZ: Objection.

2 MR. LARUSSO: That's a poorly phrased question.

3 BY MR. LARUSSO:

4 Q. The negotiations and discussions with Mr. Losch and  
5 his partner covered a number of months, approximately four  
6 or five; is that correct?

7 A. I recall it being quite a long period of time.

8 They had invited me to go see one of the  
9 projects up in western Canada, which I was unable to see,  
10 but I recall that was long before I made the decision to  
11 walkaway from them once Lehman Brothers had come back to  
12 the table.

13 Q. And in regards to the efforts to secure funding, is  
14 it unusual to have such long periods of time between the  
15 beginning of the discussions and unfortunately maybe the  
16 conclusion that no funding actually is obtained?

17 A. No.

18 In my experience that happened quite often with  
19 hard money lenders, banks that I was dealing with, and  
20 other potential funding sources.

21 Q. I'm going to take a minute and maybe to save some  
22 time on examination I'll try and do this as a group.

23 (Pause in proceedings.)

24 Mr. Kenner, I'm going to show you collectively  
25 what's been marked for identification as C 306, 307, 307

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1 A, C 308, C 308 A, 309 and C 310.

2 Would you take a look at these please. And,  
3 again, you haven't had a chance, I have not had an  
4 opportunity to show these to you before appearing here  
5 today; is that correct?

6 A. No, sir.

7 Q. After you look at them, if you recognize them, please  
8 identify what they are?

9 A. Would you like me to identify them one at a time?

10 Q. You can do that. You can do it collectively. Maybe  
11 individually would be better for the record.

12 A. Exhibit C 306 is the December 27, 2005 series of  
13 e-mails which includes myself, Mr. Losch, Mr. Dewar and  
14 Mr. Constantine related to the potential funding  
15 agreement.

16 C 307 is a February 24, 2006 e-mail.

17 Q. While you're doing that, do you recognize these  
18 e-mails?

19 A. Yes, sir.

20 Q. And you can properly identify them; is that correct?

21 A. Yes, sir.

22 The entire group are e-mails from me with the  
23 exception of C 307 A which looks like the funding  
24 agreement. I need to look at it.

25 C 307 is a series of e-mails again between the

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1 same four individuals; myself, Mr. Losch, Mr. Dewar and  
2 Mr. Constantine.

3 (Pause in proceedings.)

4 Exhibit C 307 A is a February 16, 2006 funding  
5 agreement for a loan amount of up to \$15 million for the  
6 Hawaiian project I believe which is part and parcel to  
7 that correspondence with Mr. Losch, Mr. Dewar and  
8 Mr. Constantine.

9 Q. And whose memorandum of understanding with regards to  
10 the 15 million is this?

11 MR. MISKIEWICZ: Objection.

12 MR. LARUSSO: I'll reserve that question until  
13 after.

14 A. The letter of intent is sent to Mr. Manfredi who  
15 appeared here during the trial.

16 MR. MISKIEWICZ: Objection.

17 BY MR. LARUSSO:

18 Q. Let me ask it this way.

19 Is this a document that was attached to the  
20 previous e-mail you were talking about?

21 A. I believe it was.

22 Q. Continue. Identify the documents and then I'll move  
23 them in and then talk about them specifically.

24 A. It also includes myself as a potential -- excuse  
25 me -- as a guarantor for the \$15 million loan.

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1 C 308 is a March 10th, 2006 e-mail string  
2 between Mr. Constantine, myself and Mr. Losch, Mr. Dewar  
3 and appears to be a number of other individuals at his  
4 company, a Mr. Rodd Miller and Mr. Brian Schneider with  
5 respect to the joint venture proposal.

6 Q. Can you likewise identify that e-mail?

7 A. Yes, sir.

8 C 308 A is a letter of intent for the joint  
9 venture we had been discussing with the same parties  
10 signed by Mr. Losch on March 9, 2006.

11 Q. Was that part of the previous e-mail you just  
12 discussed?

13 A. Yes, sir, it's part of this string of e-mails.

14 Q. And the next document?

15 You remember receiving that, correct, in the  
16 e-mail as an attachment?

17 A. Yes, sir, I recall all of these.

18 C 309 is a Friday, March 10th, 2006 e-mail that  
19 I believe we had seen previously. I think you presented  
20 this to me before where I mentioned Mr. Constantine as the  
21 500 pound gorilla.

22 C 310 is an e-mail correspondence between  
23 Mr. Constantine, myself and Mr. Losch and Mr. Dewar on  
24 March 12, 2006, which is a further outlining of the deal  
25 points that we were working towards at that point in March

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1 2006.

2 There may have been a couple more after this  
3 that I recall, because at this point in time on March 26,  
4 2006, 14 days after this last e-mail, C 310, I consummated  
5 the \$125 million loan with Lehman Brothers in Cabo San  
6 Lucas, and it was on or about that date that Mr. Bahti  
7 from Lehman Brothers suggested that I should not work with  
8 any other group, not necessarily these gentlemen in  
9 particular, but any other funding source, that now Lehman  
10 Brothers could be my single funding source going forward  
11 on all financial projects.

12 And I think that's what brought to an end the  
13 joint venture, potential joint venture agreements with  
14 Mr. Losch and Mr. Dewar and Mr. Constantine.

15 Q. Have you identified all of the exhibits?

16 A. Yes, sir, they are all accurate.

17 MR. LARUSSO: Your Honor, at this time, I move  
18 into evidence 306, 307, 307 A, 308, 308 A, 309 and 310.

19 MR. MISKIEWICZ: Your Honor, 309 and 310 were  
20 already offered by Mr. LaRusso under a different number.  
21 They're already in evidence.

22 We object to 307 A. I can provide the Court at  
23 sidebar or later the basis for the objection. We have no  
24 objection to the remaining.

25 THE COURT: Approach on 307 A.

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1 (The following takes place at sidebar.)

2 MR. MISKIEWICZ: My objection is simply that  
3 it's unsigned, there's no foundation, there's no  
4 indication that this went to Mr. Kenner as opposed to  
5 Mr. Manfredi. It's an unsigned letter and we have no idea  
6 where it came from.

7 MR. LARUSSO: This is an attachment part of the  
8 correspondence going back and forth. This is another  
9 possible funding source and Mr. Kenner is providing it to  
10 him in an effort to try and get him to fund.

11 THE COURT: This is just part of the back and  
12 forth exchange. The fact that it's unsigned, the purpose  
13 is to show it was -- there was significant efforts being  
14 made back and forth to try and get funding, so overruled.

15 MR. MISKIEWICZ: We do ask for a limiting  
16 instruction this goes to the state of mind of the  
17 defendant, but not necessarily for the truth.

18 MR. HALEY: May I be heard?

19 THE COURT: I'm not going to give that  
20 instruction. This relates to efforts back and forth.

21 MR. MISKIEWICZ: Okay.

22 THE COURT: Okay.

23 MR. HALEY: Thank you.

24 (Continued on next page.)

25

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1 (The following takes place in open court.)

2 THE COURT: Members of the jury, I'm admitting  
3 that group of documents although some of them may be in  
4 evidence already under other number designations.

5 (Defense Exhibits 306, 307, 307 A, 308, 308 A,  
6 309 and 310 in evidence.)

7 MR. LARUSSO: Thank you, your Honor.

8 BY MR. LARUSSO:

9 Q. I'm not going to read all of them. The first is C  
10 306.

11 This is the e-mail of December 27, 2005, from  
12 Mr. Losch to you, Mr. Kenner, and Mr. Dewar and  
13 Mr. Constantine; is that correct?

14 A. Yes, sir.

15 Q. This is the earliest of the e-mails, December 27,  
16 2005, that you have looked at?

17 A. Yes, sir, it was.

18 Q. I believe you testified the last one was in March of  
19 2006; is that right?

20 A. Yes, sir.

21 Q. Subject -- of course, there were additional e-mails  
22 following the last one that you reviewed here before the  
23 July one?

24 A. To the best of my recollection there were.

25 Q. Just as a reference down here, this is from you I



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1 believe to Mr. Losch.

2 You're talking about; let me know when you would  
3 like to schedule a visit to the big island. I can help  
4 with the logistics when ready. Until then, please enjoy  
5 the rest of the holidays.

6 That was your message to him; is that correct?

7 A. That was with respect to their desire to see the land  
8 early in the discussions.

9 Q. And then Mr. Losch is responding; let's get the  
10 Hawaiian trip planned next week. And he's asking which  
11 airline do you suggest; is that correct?

12 A. Yes, sir.

13 Q. Do you know if this trip actually took place?

14 A. I believe that they -- either Mr. Losch or Mr. Dewar  
15 made the trip with another associate or two but I was not  
16 present during their trip.

17 There would have been other individuals who were  
18 working for us on payroll at the time that would have  
19 handled that trip. It could have been Mr. Hawkins or  
20 Mr. Manfredi who was here during this proceeding.

21 Q. To your knowledge, he did take a trip to Hawaii?

22 A. I believe they did.

23 That was one of their requirements they told  
24 Mr. Constantine and I in my first meeting with them, that  
25 in order to continue that wanted to know what they were

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1 talking about, not just pictures.

2 Q. The next one is February 24, 2006. This is Exhibit C  
3 307. I won't read the whole thing, but this is an e-mail  
4 from you at the top to Mr. Losch, to his partner and to  
5 Mr. Constantine.

6 Ken and David, in an effort to help facilitate a  
7 deal between us, I have attached the LOI from Bridge  
8 Capital with an early March closing.

9 I would like you both to respect that under all  
10 normal circumstances I would not share these details with  
11 any entity that I'm working with on a mutually beneficial  
12 deal.

13 I would ask both of you, as we proceed towards a  
14 potential agreement, you work as openly with me for the  
15 long-term benefit of all interested parties.

16 That's you to both Mr. Losch and his partner; is  
17 that correct?

18 A. Yes, sir.

19 I want to make sure whatever information was in  
20 my hands with respect to deals at the time that I was  
21 being very transparent with them.

22 Q. So this is not a deal with Mr. Losch you're referring  
23 to, this is another possible funding source; is that  
24 correct, for the Hawaiian projects?

25 A. Yes, sir.

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1           There were always a number of them in play at  
2           the time and this one may have been in fact another one  
3           that Mr. Constantine had initiated.

4           Q.    And marked as C 307 -- let me back up.

5                    The e-mail actually refers on the second page to  
6           an attachment; is that correct?

7                    It mentions Big Isle Ventures LOI?

8           A.    Yes, it does.

9           Q.    What does LOI mean?

10          A.    Letter of interest or letter of intent.

11          Q.    C 307 A, that's the attachment that you sent along  
12          with that e-mail; is that correct?

13          A.    Yes, sir, it is.

14          Q.    And is this the LOI you were referring to in the  
15          e-mail?

16          A.    Yes, I believe it's one that Mr. Constantine had  
17          initiated and sent on to Mr. Manfredi who was handling all  
18          of the due diligence paperwork for these deals on behalf  
19          of myself and the group.

20          Q.    And I'm going to go through the next one; March 10th,  
21          2006. This is C 308.

22                    March 10th, 2006, e-mail from you to  
23          Mr. Constantine and attached is a message from Rodd Miller  
24          to both you, Mr. Losch and Mr. Dewar and other parties; do  
25          you see that?

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1 A. Yes, sir, I do.

2 Q. It says in the attached portion of this e-mail from  
3 Mr. Miller, per our conversation yesterday afternoon,  
4 please find the first cut at the JV proposal.

5 Please contact Ken to discuss any comments that  
6 you may have.

7 Thank you, Rodd Miller, and there's an  
8 attachment at the bottom?

9 A. Yes, sir.

10 It also references at the top some of my  
11 preliminary discussions that Mr. Constantine and I had  
12 with their group about \$15 million being paid out to our  
13 group at the closing.

14 And I know it was one of the sticking points  
15 with these gentlemen, but under that premise and one of  
16 the things that deterred me ultimately from doing the deal  
17 with these gentlemen was that Lehman Brothers proposed  
18 they would pay us \$11 million cash at the closing, which  
19 then ultimately became \$7 million and a \$4 million payout  
20 that Mr. Kaiser was unable to retrieve after the closing.

21 Q. Your testimony is in reference to your comment TC,  
22 the only thing missing is about 15 million to PK entity,  
23 PK being Phil Kenner?

24 A. Yes, sir, the Hawaiian entity. They referred to them  
25 as PK entity. They didn't want to attempt to name all of

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1 the Hawaiian names at the time.

2 Q. C 308 A, is this the attachment that was referred to  
3 in the e-mail from Avenue Community?

4 A. Avenue Community is one of their companies; that is  
5 correct.

6 Q. Who is their company?

7 A. Excuse me. I apologize.

8 The company that was owned in part by Mr. Dewar  
9 and Mr. Losch. I believe they were 50/50 partners in the  
10 deal.

11 Q. How would you describe this letter which is actually  
12 signed on the back by Kenneth Losch as manager?

13 A. That was the letter of intent or the joint venture  
14 proposal that they had attached to the previous e-mail  
15 outlining the preliminary steps that would need to be  
16 handled.

17 Q. And C 309, which is a March 10th, 2006 e-mail, and  
18 I'm going to refer to the portion where you're writing to  
19 Mr. Constantine.

20 Again, there is an attachment from Mr. Losch  
21 regarding the deal, but you say you are the 500 pound  
22 gorilla at PK.

23 What are you referring to when you say that?

24 A. I think I may have testified to this previously, but  
25 with respect to all of these very difficult funding

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1 arrangements Mr. Constantine, pursuant to his funding  
2 consulting agreements with us, had continued to put some  
3 very respectable and some very potential lenders and joint  
4 venture partners of myself, Mr. Manfredi and Mr. Kaiser  
5 and our group.

6 So, again, during these very difficult times, I  
7 was thrilled to know one of the few people that was still  
8 delivering.

9 Q. And the last one is C 310. This is the last of the  
10 group of e-mails, March 12, 2006.

11 This is from Mr. Constantine to Mr. Dewar,  
12 Mr. Losch and yourself relating to this funding  
13 negotiations that is ongoing at the time?

14 A. The funding in the joint venture opportunity, that's  
15 correct.

16 Q. Mr. Kenner, I'm going to ask you a few questions if I  
17 may regarding the tape at Home Depot and I'll use the  
18 transcript that was received to help us pinpoint the areas  
19 that I would like to ask questions about.

20 I believe you were asked regarding a portion of  
21 the conversation with Mr. Constantine as reflected on page  
22 11, and I believe there was a highlighted portion and this  
23 is not the copy that was shown to you but I believe this  
24 is the highlighted portion that was shown to you where it  
25 starts with Mr. Constantine talking to you.

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1           You're in deep and the word I believe was F'ing  
2       shit. If this stuff happens, you are in deep shit. The  
3       F'ing FBI is all over this F'ing thing and they're not  
4       asking about anybody else and I'm trying to stop you from  
5       burning down your own life.

6           Do you remember that?

7       A. Yes, sir, I do.

8       Q. When that highlighted portion was discussed with you,  
9       there was an earlier portion that was not included that  
10      says, you took it and you ran with it, Phil, and you  
11      created a shit storm that may not be fixable and I'm here  
12      to tell you that I'll put this shit over here.

13           That was not read to you; is that correct?

14      A. That is the first time it was read to me just now.

15      Q. When Mr. Constantine is talking to you at this point,  
16      he's telling you, am I correct, that you're the one that  
17      is in trouble, that you are the individual that may be  
18      burning down your own life. He uses the word you; is that  
19      correct?

20      A. Correct.

21      Q. He's not using the word we in discussing the  
22      situation; is that correct?

23      A. No, sir, he was just referencing myself.

24      Q. And that kind of conversation that Mr. Constantine  
25      was having with you, he often referred to you when he was

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1 discussing events, he used the word you?

2 MR. MISKIEWICZ: Objection.

3 MR. LARUSSO: I'll withdraw that, Judge. It  
4 speaks for itself.

5 BY MR. LARUSSO:

6 Q. Again, let's talk a few minutes about the tape itself  
7 if I may.

8 If I understand your testimony correctly, you  
9 originally recorded it and after the recording you were  
10 able to determine that the conversation lasted  
11 approximately 56 minutes?

12 A. Yes, sir.

13 Q. And then after you had recorded it, you made a CD for  
14 Mr. Stolper?

15 A. After I spoke with Mr. Stolper on the phone and  
16 informed him of the recording; yes, sir.

17 Q. And you then sent the CD off to Mr. Stolper; is that  
18 right?

19 A. Yes, sir, I did.

20 Q. There came a point in time that you re-listened to  
21 that recording; is that correct?

22 A. There was a point in time later, many years later in  
23 or about September or October of 2013, when Mr. DeVries  
24 and I were in Mexico together working with new attorneys  
25 seeking a new arrest warrant for Mr. Jowdy and possession



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1 order for the courts to order to give our resort back to  
2 my control.

3 Mr. DeVries and I were getting ready for dinner  
4 one night and I happened upon the audio recording still on  
5 my phone and I played him about the first seven or eight  
6 minutes at that point in time and he told me, like many of  
7 the others had, that they already had heard that from  
8 Mr. Stolper who forwarded copies to all of the individuals  
9 in our group.

10 Q. At that point did you continue to listen to the  
11 recording on your iPhone and realize there was a portion  
12 missing?

13 A. No, sir.

14 Q. When did you realize there was a portion missing from  
15 the conversation that you recorded?

16 A. Actually I think the first time I realized it was  
17 only about two weeks after the initial recording on August  
18 2nd of that particular year.

19 I believe when Mr. Kaiser and Mr. Berard flew  
20 into Phoenix on the morning of the shareholder meeting  
21 with Mr. Constantine at Eufora's offices, I gave it to  
22 them to play it and that's the first time I realized there  
23 was only approximately 26 minutes of that meeting taped.

24 Q. Do you know why there was 26 minutes missing on --  
25 I'm sorry -- there was only 26 -- there were 26 minutes

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1 missing on the tape?

2 A. I'm sorry. I may have misspoken. There was only 26  
3 minutes on the recording on my phone at that point.

4 But to your question --

5 Q. So there's 31 minutes missing?

6 A. There were 30 more minutes missing.

7 Q. What happened to that?

8 A. I don't know.

9 Q. When you recorded it for purposes of communicating it  
10 to Mr. Stolper, you were under the belief you recorded the  
11 entire conversation; is that correct?

12 A. Yes, sir.

13 Q. And have you come to learn that the copy he has,  
14 likewise doesn't have the additional portion that is  
15 missing from the tape?

16 MR. HALEY: No objection.

17 MR. LARUSSO: I'll withdraw that.

18 BY MR. LARUSSO:

19 Q. By the way, the missing portion contained a  
20 continuation of conversation you had with Mr. Constantine  
21 and you; is that correct?

22 A. Yes, sir, it did.

23 MR. LARUSSO: Just one minute, your Honor, if I  
24 may.

25 (Pause in proceedings.)

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1 BY MR. LARUSSO:

2 Q. Mr. Kenner, in the Urban Expansion loan, actually in  
3 the Lehman loan, monies were paid to Urban Expansion to  
4 satisfy the obligation that was entered back I believe you  
5 said October 2005; is that correct?

6 A. The obligation from the October 2005 Urban loan, that  
7 is correct.

8 Q. That contract was between Urban Expansion and I  
9 believe you said Ka'u Holding Company?

10 A. Ka'u Holding Company.

11 Q. K-A apostrophe U Holding Company; is that right?

12 A. Yes, sir.

13 Q. Do you recall, in your discussions with either  
14 Mr. Grdina or Mr. Constantine, representing that you were  
15 the owner of Ka'u Holding?

16 I used the word owner, not managing member.

17 A. I don't believe so.

18 I think there was some confusion in our early  
19 discussions that perhaps Mr. Grdina was under the  
20 impression I was the sole owner of Ka'u, but we  
21 straightened that out relatively quickly in e-mails with  
22 Mr. Constantine's lawyer at the time.

23 Q. Let me show you what's been marked for identification  
24 as C 138.

25 (Exhibit handed.)

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1 Do you recognize this as an e-mail from  
2 Mr. Constantine to you in response to an original e-mail  
3 from you to him?

4 A. Yes.

5 I think this is an e-mail between myself,  
6 Mr. Constantine, Mr. Grdina and Mr. Constantine's attorney  
7 Todd Lockwood.

8 Q. At the time, what time are we talking about?

9 A. Just prior to the closing of the Urban Expansion  
10 loan.

11 And as I read it, it actually still sounds a  
12 little bit --

13 Q. You can't talk about what's in it.

14 You recognize it as the e-mail between the  
15 parties we just discussed?

16 A. Yes, I do.

17 MR. LARUSSO: May I ask it be received, your  
18 Honor?

19 MR. MISKIEWICZ: No objection.

20 MR. HALEY: No objection.

21 THE COURT: C 158 is admitted.

22 (Defense Exhibit C 158 in evidence.)

23 BY MR. LARUSSO:

24 Q. It's the e-mail dated October 11, 2005, from  
25 Mr. Constantine to you and the other individuals that you

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1 mentioned.

2 And attached to that is the e-mail from you,  
3 Mr. Kenner, to Mr. Constantine dated October 11, 2005, at  
4 10:13 p.m., the one Mr. Constantine wrote the same date at  
5 11:50 p.m., did I say that correct?

6 A. The bottom e-mail was the first e-mail and the top  
7 e-mail was the response.

8 Q. Now, I'm just going to read a portion here.

9 It says: Tommy. This is your communication to  
10 him.

11 Please inform the attorneys that our deal is  
12 going to be between your new entity which you understood  
13 to be Urban Expansion; is that correct?

14 A. I don't know if it was named at the time. I knew  
15 there was a new entity Mr. Constantine was forming.

16 Q. And Ka'u Holding Company, LLC, I am the CEO and  
17 managing member of this company as well as Big Isle  
18 Ventures, LLC, (which the original appraisal was written  
19 for) but I own the land in the name of Ka'u Holding, LLC.

20 I look forward to consummating our deal this  
21 week.

22 Thanks to you and Jimmy for all your efforts  
23 this week.

24 Did I read that correctly?

25 A. Yes, sir.

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1 Q. Just a few more questions. I was able to find the  
2 chart, but it's the one that was marked defendant's  
3 exhibit C 7. It's Government's Exhibit 7.

4 This contains additional writing that was made  
5 during the examination of one of the earlier witnesses.

6 Do you remember this? Do you recall this?

7 A. Not specifically.

8 Q. Do you see that, Mr. Kenner?

9 A. I do see it. Yes, sir.

10 Q. My questions are in reference to the monies that were  
11 coming from Constantine Management Group to First American  
12 Title and to you.

13 Do you see those two, that would be on August  
14 15, 2006, for \$50,000, and August 22nd, 2006, 419,000; is  
15 that correct?

16 A. Yes, sir, I see those numbers.

17 Q. At the time you received this money, you thought  
18 these were proper payments for monies given to you; is  
19 that correct?

20 You didn't, at any point, think this was part of  
21 a scheme to defraud anybody; is that right?

22 MR. MISKIEWICZ: Objection.

23 THE COURT: Overruled. You can answer that.

24 A. None of these funds were part of a scheme to defraud,  
25 that's correct.

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1 BY MR. LARUSSO:

2 Q. My question to you is at this time, which would be  
3 August 2006, this is the Lehman closing, correct?

4 A. Yes, sir, the Hawaiian Lehman closing.

5 Q. The Grdina loan is October 2005, correct?

6 A. Yes, sir.

7 Q. Prior to October of 2005, do you recall any business  
8 deals or transactions with Mr. Constantine in regards to  
9 the Palms unit that you testified that he had acquired? I  
10 believe there are a number. More than two I believe.

11 Do you recall any business deals with him such  
12 as acquiring a percentage interest in it?

13 A. Yes, sir.

14 Originally I was planning to acquire a portion  
15 of -- a few of Mr. Constantine's units.

16 But if I recall correctly, I was waiting on some  
17 of the personal loans that Mr. Jowdy had owed me. And in  
18 addition to about eight or \$900,000 that he owed me at the  
19 time, and he never paid me back, not in 2005, nor did he  
20 ever pay me back for those numbers and most of them are  
21 still on his Diamante Del Mar books and records as unpaid  
22 expenses to me, loans and expenses to me.

23 Q. I'm going to show you what is marked as 278, C 278.  
24 I believe the government introduced it as another exhibit.

25 MR. MISKIEWICZ: May we approach, your Honor?

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THE COURT: Let's take the morning break. It's  
11:30. We will take the morning break. Don't discuss the  
case.

(The jury is excused.)

(Continued on next page.)



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1 (Out of the presence of the jury.)

2 THE COURT: Please be seated.

3 What's the issue? We have to get through  
4 Mr. Kenner's testimony.

5 MR. LARUSSO: I want to show him the financial  
6 statement where listed are condominium units when he has a  
7 percentage interest. I assume he will say that is what he  
8 got from Mr. Constantine, \$1.5 million through the Urban  
9 Expansion loan. That was the end of my examination,  
10 Judge.

11 MR. MISKIEWICZ: The portions of this have  
12 nothing to do with Mr. Kenner.

13 There seems to be attached to that a financial  
14 statement for Sergei Gonchar. This was provided by 1st  
15 Source. A couple pages were offered by the Government on  
16 Mr. Kenner's cross.

17 The handwriting, we don't know -- basically I  
18 would object to anything outside of any of the financial  
19 statements that Mr. Kenner makes in his document, and  
20 that's it.

21 Again, we've never seen this before, and it  
22 would have helped if we'd seen it earlier.

23 MR. HALEY: Your Honor, I also have an  
24 objection.

25 I think we are so far afield from issues that

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1 are so far tangentially related to the issues at this  
2 time, I would object to --

3 THE COURT: Thank you, Mr. Haley, for joining me  
4 on that.

5 MR. HALEY: I'll stop talking at this point.

6 THE COURT: Yes. I'm sitting here and trying to  
7 follow this, Mr. LaRusso. I have no idea what you are  
8 trying to do with this last point, and the Government's  
9 objection is well taken.

10 I don't know -- is this Mr. Gonchar's financial  
11 statement? Are you trying to do that of Mr. Kenner?

12 MR. LARUSSO: Judge, this is Mr. Kenner's  
13 financial statement as far as I'm aware of. The guarantee  
14 of payment attached to it, I didn't break the exhibit  
15 because it came together.

16 We're not interested in the guarantee from  
17 Mr. Gonchar. I want to question Mr. Kenner and see if he  
18 remembers prior to the Gonchar loan he had secured  
19 \$1.5 million in assets he was putting down on the  
20 financial statements from the Palms unit he got from  
21 Mr. Constantine, that's all.

22 THE COURT: I'll allow it if that is the only  
23 thing.

24 MR. MISKIEWICZ: We would ask for the documents  
25 signed, purportedly signed, by Mr. Gonchar --

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1 THE COURT: Are you going to introduce the  
2 document?

3 MR. LARUSSO: I will not introduce it, just show  
4 it to him and explain it and then we're done.

5 THE COURT: I'll only allow that.

6 Okay, Mr. Haley?

7 MR. HALEY: Judge, may I have one moment?

8 (Counsel confers with defendant.)

9 MR. HALEY: I would defer, obviously, to the  
10 Court's ruling. My position has previously been saved,  
11 Judge. I'm at a loss to understand relevance,  
12 materiality, even tangential issues framed within the four  
13 corners of the indictment.

14 THE COURT: If Mr. Kenner is telling you that  
15 there is something more to it, I'm giving him leeway on  
16 relevance. I still don't understand relevance, but as  
17 long as there is no issue, I'll allow him to do it. But I  
18 still don't understand the relevance.

19 MR. HALEY: I'm not sure he's going to get the  
20 answer he's anticipating that Mr. Kenner will give. I'm  
21 not sure -- look, I can't testify for my client, Judge. I  
22 object.

23 THE COURT: I don't understand the relevance.

24 MR. LARUSSO: There's an awful lot of testimony  
25 regarding the \$1.5 million that Mr. Constantine was

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1 supposed to put into the Urban Expansion deal with a Kau  
2 Holding, and there was a series of business transactions  
3 going back and forth with Mr. Kenner and Constantine. One  
4 is the transfer of partial ownership in a number of  
5 assets, including the Palm units and Avalon Park. And the  
6 financial statement reflect -- the \$1.5 million reflects  
7 part of Mr. Kenner's financial assets.

8 And as the Court knows, we'll be trying to  
9 explain to the jurors the absence, or at least the  
10 allegation, that the 1.5 was never put in by  
11 Mr. Constantine pursuant to the agreement.

12 THE COURT: So the argument is that 1.5 went to  
13 Mr. Kenner in the form of interest in the Palm's unit.

14 MR. LARUSSO: And I believe Avalon, which totals  
15 the 1.5, Judge.

16 MR. HALEY: Your Honor, he may not like the  
17 answer but he can ask the question.

18 THE COURT: And you'll be brief, correct?

19 MR. HALEY: Yes, your Honor. I have to discover  
20 C-158, the e-mail. I have four discrete areas. Not a  
21 stream, Judge, more like raindrops.

22 THE COURT: Okay. Let's take a short break.

23 (Whereupon, a recess was taken.)

24 THE COURT: Please be seated.

25 MR. LARUSSO: Your Honor, I have no further

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1 questions.

2 MR. HALEY: The time has been useful. I have  
3 further collapsed my efforts.

4 THE COURT: All right. Let's bring the jury in.  
5 (Whereupon, the jury at this time enters the  
6 courtroom.)

7 THE COURT: Please be seated.

8 MR. HALEY: No further questions, your Honor.

9 THE COURT: Mr. Haley, go ahead.

10 MR. HALEY: Thank you, your Honor.

11 RECROSS-EXAMINATION

12 BY MR. HALEY:

13 Q Phil, on Thursday before we broke for the day,  
14 Mr. Miskiewicz asked you some questions concerning a  
15 subpoena that you had received in connection with  
16 testifying before the grand jury; later a letter  
17 rescinding that subpoena, advising you you did not have to  
18 appear.

19 Do you recall those questions?

20 A Yes, sir, I do.

21 Q Would you kindly take a look at what has been marked  
22 in evidence Kenner Exhibit --

23 THE COURT: Pursuant to the discussion we had  
24 earlier this morning, K-239, K-240, K-241, are admitted in  
25 evidence.

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1 MR. HALEY: Thank you.

2 (Whereupon, Defendant's Exhibits K-239, K-240  
3 and K-241 were received in evidence.)

4 Q Tell us what that is, K-239.

5 A K 239 was the subpoena I received from the U.S.  
6 Attorney's Office to testify before the grand jury related  
7 to Ken Jowdy.

8 Q Okay. I'm going to show you what is marked as Kenner  
9 240. It is in evidence. Don't read it, but what is this?

10 A Kenner Exhibit 240 is the cover letter that  
11 accompanied the U.S. Attorney's grand jury subpoena for me  
12 to appear and testify regarding Ken Jowdy.

13 Q And Kenner 241, what is this?

14 A Kenner Exhibit 241 was the letter on July 27, 2009,  
15 ten days later, that was sent to my attorney regarding  
16 cancelling my grand jury appearance.

17 MR. HALEY: Thank you.

18 Q Now, a moment ago a tape-recording was played,  
19 acknowledged by you it is a conversation between yourself  
20 and Kristin Peca.

21 You do say, "Sorry, I'm sorry for that."

22 Do you recall that part of the conversation?

23 A Yes, sir, I believe that was the first conversation  
24 we listened to.

25 Q Would you describe the circumstances under which you

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1 had that conversation with Kristin and what you meant by  
2 that?

3 A I was apologizing to her that she was not aware of  
4 the Northern Trust seizure of their collateral. But I  
5 carried out all my business relationships with my hockey  
6 player Kleins. I didn't contact any of the wives or  
7 girlfriends of the individuals with respect to any of  
8 these business matters. My clients were the hockey  
9 players.

10 So I apologize that Ms. Peca didn't know about  
11 that. But that would have been Mr. Peca's responsibility,  
12 to let his wife know pursuant to a conversation we had.

13 I had a series of conversations with Mr. Peca  
14 leading up to the lines of credit, just like the rest of  
15 the individuals.

16 Q The exhibit that was shown to you, Exhibit No. 104,  
17 from you to Tyson Nash, you used the word "rat," R-A-T; is  
18 that correct?

19 A I used the word R-A-T.

20 Q That's not a nice word. What did you mean by that,  
21 "rat"?

22 A I was just letting Tyson know it had been my belief  
23 that he had been the person leaking information to  
24 Mr. Constantine with respect to Mr. Stolper's  
25 investigation. And he vehemently denied it on the phone

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1 conversation. And I was just telling him if it's not him,  
2 he needs to help me find out who the rat was disseminating  
3 information from Mr. Stolper's group to Mr. Constantine at  
4 that point in time.

5 Q Did you later come to learn who that person was?

6 A Yes, sir, I did.

7 Q And who was it?

8 A It was Sergei Gonchar.

9 Q And finally, with reference to the question asked of  
10 you regarding your affidavit that you filed in connection  
11 with the bankruptcy proceeding, that adversary  
12 proceeding -- or the adversary affidavit you filed, you  
13 were asked a question in connection as to why there was  
14 not reference to other private stock sales in your  
15 affidavit.

16 Do you recall that?

17 A Yes, sir, I recall that question.

18 Q What, if any, effort did you take to ensure that the  
19 private stock sales that had occurred with reference to  
20 your hockey player clients' investments in Eufora were  
21 made known in that proceeding?

22 A In addition to my own personal adverse proceeding I  
23 filed against Mr. Constantine's bankruptcy proceeding  
24 specific to my interactions with Mr. Constantine, I  
25 assisted in the filing, I believe, of nine other adverse



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1 proceedings versus Mr. Constantine's bankruptcy for nine  
2 of my clients at that time. And in each one of their  
3 individual adverse proceeding filings, which is like a  
4 lawsuit against the bankruptcy, we alerted the bankruptcy  
5 court that each one of those individuals were investors in  
6 Eufora through Mr. Constantine's private stock sales, and  
7 we were seeking the Court's intervention on that, for each  
8 one of them.

9 That's where they were represented, because  
10 that's where it was appropriate to, not in a loan personal  
11 affidavit.

12 MR. HALEY: Thank you. I have no further  
13 questions.

14 THE COURT: You may step down, Mr. Kenner.  
15 Do the defendants rest?

16 MR. HALEY: Your Honor, may we approach briefly?

17 (Whereupon, at this time the following took  
18 place at the sidebar.)

19 (Continued.)  
20  
21  
22  
23  
24  
25

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1 MR. HALEY: Under normal circumstances I would  
2 rest. From my perspective, this is an abnormal case.

3 What we saw happen as relates to the  
4 presentation of witnesses by Tommy Constantine,  
5 particularly Sergei Gonchar, where there were allegations  
6 consistent with -- allegations in the indictment were  
7 mentioned by that particular witness, and your Honor was  
8 kind enough to give me the opportunity when I conducted my  
9 redirect of my client to at least address that.

10 I don't know for certain, but it may happen that  
11 as a result of the presentation by Mr. Constantine in his  
12 defense, there may be matters I need to put Phil back on  
13 the stand to address in some fashion.

14 THE COURT: May I make a suggestion?

15 Why don't you rest now without prejudice to  
16 asking him to reopen it if something new comes up. I'll  
17 tell that part to the jury.

18 MR. HALEY: Thank you. I understand.

19 (End of sidebar conference.)

20 (Continued.)

21

22

23

24

25

**D'Ambrosio - Direct/LaRusso**

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1 MR. HALEY: The defense of Phil Kenner rests,  
2 your Honor. Thank you.

3 THE COURT: As you know, Mr. LaRusso started his  
4 presentation of evidence last week with Mr. Gonchar. I'll  
5 ask him to call his next witness.

6 MR. LARUSSO: Your Honor, on behalf of  
7 Mr. Constantine, we will call Mark D'Ambrosio.

8 THE COURT: Come up, please.

9 Please raise your right hand.

10 **M A R K D ' A M B R O S I O,**

11 called as a witness, having been first  
12 duly sworn, was examined and testified  
13 as follows:

14 THE COURT: Please state your name and spell it  
15 for the record.

16 THE WITNESS: Mark D'Ambrosio, D, apostrophe,  
17 A-M-B-R-O-S-I-O.

18 THE COURT: And Mark, M-A-R-C or M-A-R-K?

19 THE WITNESS: M-A-R-K. Sorry about that.

20 THE COURT: Please bring the mike down and keep  
21 your voice up.

22 DIRECT EXAMINATION

23 BY MR. LARUSSO:

24 Q Where do you presently reside?

25 A Scottsdale, Arizona.

**D'Ambrosio - Direct/LaRusso**

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1 Q How long have you presently resided in Scottsdale,  
2 Arizona?

3 A I was born and raised there.

4 Q Can you tell us what your present occupation is?

5 A Since 1998 I've been running the Software Web Mobile  
6 Marketing Company?

7 Q Would you describe what you are doing in layman's  
8 terms?

9 A Mostly software development and web marketing.

10 Q Do you know a person by the name of Tommy  
11 Constantine?

12 A Yes.

13 Q Do you see him here in court today?

14 A Yes.

15 MR. LARUSSO: Indicating the defendant, your  
16 Honor.

17 MS. KOMATIREDDY: No objection. We concede the  
18 identification.

19 THE COURT: Do you concede the identification?

20 MR. HALEY: I do, your Honor.

21 THE COURT: Identification conceded.

22 Q Tell us how you first came to meet Mr. Constantine.

23 A I think I met Tommy in 1997, maybe '98. He had a  
24 place where he stored his race car at the time, and a  
25 friend of mine worked at the adjacent body shop. And

**D'Ambrosio - Direct/LaRusso**

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1 Mr. Constantine asked them to superimpose some graphics on  
2 the trailer and the car so that when he was pitching  
3 sponsorship, he would be able to show what the car looked  
4 like.

5 They didn't have the ability to do that, and at  
6 the time I was working part-time for my father's company  
7 helping with computer graphics. So I was introduced to  
8 Tommy through a gentleman named Craig Johnson.

9 Q After you were introduced to Mr. Constantine, did you  
10 do any work for him?

11 A He gave me a small project to work on. He actually  
12 came over to the house and worked on it with me. And at  
13 that time I was very interested in cars and racing, so  
14 when he was over we kind of talked about racing and cars  
15 as we were working on the graphics. And that was a small  
16 project.

17 After that we just kind of cultivated a  
18 friendship over the course of the next three or four  
19 years.

20 Q Did there come a time in your relationship with  
21 Mr. Constantine that you became involved with a company  
22 called Eufora?

23 A Yes.

24 Q Could you tell us how you became involved in Eufora?  
25 Give us the background for it?

**D'Ambrosio - Direct/LaRusso**

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1 A Tommy was involved in motor sports marketing, and I  
2 was doing marketing for my own products and -- my own  
3 products and computer graphics. I spent a lot of time  
4 with Tommy. We just brainstormed. And one afternoon we  
5 came up with -- at that time it was the concept of Eufora.

6 What it ended up being was much different than  
7 what the original concept was because it evolved into  
8 something much greater. I think we started talking about  
9 it in probably the end of 2000, to the end of 2001.

10 Q Give us the initial idea what the concept of Eufora  
11 was.

12 A Initially it was -- my thought and goal was -- I saw  
13 large success in companies doing multilevel marketing at  
14 the time, and in my opinion you always had to buy or sell  
15 a product nobody ever wanted. That was really just a way  
16 in order to get people into the system, in order to  
17 convince people and incentivize them to make money.

18 So we came up with a concept where -- we wanted  
19 to come up with a product that everybody uses and needs,  
20 and it was a payment card, that people would get paid if  
21 they were willing to help spread the word about the card.

22 Q I assume your discussions continued with respect to  
23 the cards to the development and formation of Eufora?

24 A Over the next two years it evolved into something  
25 much, much greater. The first conversation was in the

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1 back of Tommy's pickup, sitting there. And what it turned  
2 out to be was something much, much greater than the  
3 initial concept.

4 Q When you say "turned out to be something much, much  
5 greater," just give the jury an idea what it morphed into  
6 for purposes of this part of the testimony.

7 A Well, within 18 months we were talking to major banks  
8 about issuing our card. Prior to that Tommy had a friend  
9 that he was introduced to that -- this gentleman owned a  
10 very large subprime credit card company, and we -- Tommy  
11 did a deal with him in terms of an advertising deal, and  
12 it turned out to be very prosperous endeavor.

13 And we decided, hey, this is something we know  
14 had a potential to be really big, and we started talking  
15 to banks about issuing our own brand.

16 Q Did there come a time when you incorporated Eufora  
17 around August of 2001?

18 A Yes, 2001. We started working on it in 2000, but I  
19 think we followed it up in 2001.

20 Q Can you tell us, after incorporating the business,  
21 what if any impact did 9/11 have on your business plan at  
22 this point?

23 A Well, I was very lucky to have and be working with  
24 someone like Tommy at the time, because with his  
25 experience with pitching sponsorship, I would give him the

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1 leads, which bank we should work with, and he would start  
2 literally at the customer service management and go to  
3 upper management.

4           Knowing we started in 2000 and we were on our  
5 third red line version, we were running an agreement with  
6 Metris, M-E-T-R-I-S, Bank. We were very close to signing  
7 a deal with the Metris companies. We had, I think, a  
8 20,000-square-foot building we were just about to sign a  
9 lease on, and September 11th happened, and the whole  
10 landscape of the business changed.

11 Q     What happened?

12 A     Well, Metris kind of backed out of our deal, mostly  
13 because, again, the credit card landscape changed so much  
14 after 2001, mostly because -- the feedback that we got  
15 back, the economy changed by -- people would go to the  
16 internet, and now they were out of work, they would go and  
17 apply for a credit card.

18           What they would do at that time, which they knew  
19 very little about, is have an instant decision. Somebody  
20 who lost their job could go to one company, close the  
21 browser, and get 30 or \$40,000 worth of credit, where they  
22 should have only gotten \$5,000 of credit based on their  
23 income.

24           What happened at that time was the Government  
25 said, if you are issuing cards in this sector which they



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1 considered subprime -- and at the time, I think it was 620  
2 or less -- that you had to have 20 percent in reserves  
3 just sitting in the bank, just in case we have another  
4 downfall, terrorist attack, what have you, that you needed  
5 to have reserves.

6 Q What happened with your idea with Eufora?

7 A There were a couple banks that went out of business.  
8 For us, we were then kind of starting back at -- starting  
9 from scratch again. We secured another bank, I think,  
10 within a year from that. Maybe 16 to 18 months after, we  
11 secured another bank.

12 The problem with this bank was they only issued  
13 superprime cards, so anything over 680 or 700 FICO score  
14 and higher.

15 Q Did there come a point in time when you and others  
16 executed an operating agreement for Eufora?

17 A Yes. Prior to getting office space, I think we had  
18 an operating agreement that was dated in 2002.

19 Q Let me show you what has been marked as C-265.

20 Do you recognize this (handing)?

21 A Yes. This looks like the original operating  
22 agreement with the original shareholders.

23 Q You examined this before appearing here today; is  
24 that correct?

25 A Yes.

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1 Q Are there any signatures on that document, and if so,  
2 where do they appear?

3 A We have Tommy Constantine, my signature, Daniel  
4 Kennedy, Matt Cotrell, C-O-T-R-E-L-L, Eric Edenholm, and  
5 Phil Kenner.

6 Q Do you recognize this as the original operating  
7 agreement signed by you and those individuals? Is that  
8 correct?

9 A Yes.

10 MR. LARUSSO: May I ask C-265 be received at  
11 this time?

12 MS. KOMATIREDDY: No objection.

13 THE COURT: Mr. Haley, any objection?

14 MR. HALEY: May I have a moment, Judge?

15 I'm sorry, Judge. Thank you. No objection.

16 THE COURT: C-265 is admitted.

17 (Whereupon, Defendant's Exhibit C-265 was  
18 received in evidence.)

19 BY MR. LARUSSO:

20 Q Mr. D'Ambrosio, I'll refer to a number of pages.  
21 This is C-265.

22 This operating agreement was entered on  
23 August 16, 2002; is that correct?

24 You have a screen right to your right.

25 A Sorry about that. Yes.

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1                   What was the question.

2       Q     This was entered August 16, 2002?

3       A     Yes.

4       Q     And who were the original members of Eufora? And I'm  
5     turning to page 3, if you need to use that.

6       A     Yes. Tommy Constantine, myself, Matt Cotrell, C-9  
7     Consulting, which is Mr. Kenner, Eric Edenholm, and LMJ  
8     Management.

9       Q     And this document reflects the percentage ownerships  
10    of these members; is that correct?

11    A     Yes.

12    Q     Read them into the record.

13    A     Tommy Constantine, 50 percent; Mark D'Ambrosio,  
14    20 percent; Matt Cotrell, 10 percent C-9 Consulting, 10  
15    percent; Eric Edenholm, 5 percent; LMJ Management, 5  
16    percent.

17    Q     Who was C-9 Consulting?

18    A     Dan Kennedy.

19    Q     Who is LMJ management?

20    A     So to my knowledge it was Phil Kenner. His signature  
21    was on the signature page.

22    Q     What is capital contribution?

23    A     The definition, if a company needs money or capital  
24    moving forward, any of the members are obligated to fund  
25    the company. If you are unable to fund based off of your

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1 interest, then you get diluted.

2 Q In regards to the incorporation or the operating  
3 agreement we are talking about, what was the contribution  
4 that each one of those individuals made in regards to  
5 their percentage interest in the business?

6 A I remember on this contract, maybe a couple pages  
7 back, there should be dollar amounts for what everybody  
8 contributed.

9 Q You may be more familiar with this than I am.

10 Are you talking in the back of the agreement?

11 A It should be.

12 Q You are talking about the exhibit, I'm sorry.

13 Towards the end, there's a document marked  
14 Exhibit A.

15 A That looks correct.

16 Q What does that reflect?

17 A Tommy Constantine, 50,000. We are talking about  
18 capital contribution.

19 Matt Cotrell, 20,000.

20 Mark D'Ambrosio, 20,000.

21 Q At the top it says C-9 Consulting, at the top?

22 A Right. C-9 did not contribute any capital, but they  
23 were our technology partner so they were responsible for  
24 developing the software.

25 Q So in return for their promise to develop the

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1 software for Eufora, they were given a 10 percent  
2 interest; is that correct?

3 A Yes.

4 Q Where did that 10 percent interest come from, if you  
5 know?

6 A Tommy's shares.

7 Q Mr. Constantine was supposed to have a 60 percent  
8 interest, and from that Mr. Kennedy was given 10 percent  
9 for his contractual obligations; is that correct?

10 A Yes.

11 Q And then I believe there were two others. You said  
12 Eric Edenholm?

13 A Yes. \$125,000 investment. And LMJ -- I'm sorry, two  
14 payments of 125 each, so 250,000 from Eric, and 250,000  
15 from LMJ.

16 Q If I could just for a moment ask you about  
17 Mr. Kennedy.

18 How long did he remain working with Eufora?

19 A I would say to the best of my knowledge it was more  
20 than a year. But around the second year we really were  
21 growing, we needed a lot of technology, and he just didn't  
22 have the resources and couldn't keep up. So we kind of  
23 phased him out, and I built my own team within Eufora and  
24 hired our own software developers.

25 Q Mr. Kennedy still retained at that time his 10

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1 percent interest in Eufora; is that correct?

2 MS. KOMATIREDDY: Objection to form.

3 THE COURT: Overruled.

4 You can answer that.

5 A Yes.

6 Q Did there come a time when his percentage interest in  
7 the business changed?

8 A Yes.

9 Q Tell us about that.

10 A Well, he could no longer fulfill his obligations to  
11 be developing technology for us, so Tommy was mostly  
12 funding the company at that time, so he elected to sell  
13 his shares to put into, at that time, the company for  
14 capital.

15 Q How many occasions did he do that?

16 A I think over the course of the lifetime of the  
17 company, two different times.

18 Q Okay.

19 Would you just describe briefly the two times  
20 Mr. Kennedy made transfers of his shares and to whom and  
21 for what purpose?

22 A One time was when the company needed capital, and  
23 then a second time when Dan -- Dan's company was still  
24 kind of helping, but there was a point when Dan --  
25 honestly, I think he might have shut down his technology

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1 company, and Tommy took back shares that he gave to Dan

2 Kennedy when we formed the company.

3 Q Who did Dan Kennedy give those shares to?

4 A I think it was Tommy's company, CMJ.

5 Q Didn't give them back to Eufora; is that correct?

6 A No. They were not Eufora's shares. They were

7 Tommy's shares.

8 Q Let me show you what has been marked for

9 identification as C-267.

10 Do you recognize this?

11 A Yes, I do.

12 Q What do you recognize about that document?

13 A That this is where --

14 Q Try to keep your voice up.

15 A Sorry.

16 This is where Tommy took back half of the shares

17 that Tommy originally gave to Dan Kennedy.

18 Q When did this occur?

19 A This is dated February 5, 2008.

20 Q Did you see this document at or about the time it was  
21 executed?

22 A Yes.

23 Q And what is this document?

24 A This is where, again, Dan is giving back Tommy 4  
25 percent of his remaining 8 percent.

**D'Ambrosio - Voir Dire/Komatireddy**

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1 Q Is this document prepared and maintained by the  
2 company in the ordinary course of business?

3 A Yes.

4 MR. LARUSSO: May I ask C-267 be received at  
5 this time?

6 VOIR DIRE EXAMINATION

7 BY MS. KOMATIREDDY:

8 Q Your signature is not on the document, right?

9 A No.

10 Q Did you actually watch it being signed?

11 A Yes.

12 Q When?

13 A Probably that same day.

14 Q You don't remember watching it being signed?

15 A I was there when most of the documents were signed.

16 Q Were or were not?

17 A I was.

18 Q You don't remember watching this document being  
19 signed though?

20 A I was there when all the transfers were done.

21 Q You said you were there when most of the transfers  
22 were done, and now you are saying when all the transfers  
23 were done. Which is it?

24 A Unless there are other transfers, that one in  
25 particular, yes.



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1 Q I'm asking you about this document that Mr. LaRusso  
2 just put in front of you and showed you before you walked  
3 in here today.

4 Can you tell me whether you walked in and saw  
5 this document being signed on February 5, 2008?

6 A Yes.

7 MS. KOMATIREDDY: No objection.

8 MR. HALEY: I have no objection.

9 THE COURT: C-267 is admitted.

10 (Whereupon, Defendant's Exhibit C-267 was  
11 received in evidence.)

12 DIRECT EXAMINATION

13 BY MR. LARUSSO: (Continued)

14 Q I'll display it, and read the pertinent parts.

15 A Transfer of portion of membership interest of Eufora,  
16 LLC. The undersigned, C-9 Consulting, for valuable  
17 consideration, the receipt of which is hereby  
18 acknowledged, hereby transfers and conveys to the  
19 Constantine Management Group all transferors' right, title  
20 and interest in Eufora, LLC, an Arizona Limited Liability  
21 Company, 4 percent of the 8 percent membership interest,  
22 leaving 4 percent membership interest owned by C-9  
23 Consulting.

24 Dated the 5th day of February, 2008.

25 And the typed portion says "William Daniel

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1 Kennedy," with the signature of the individual.

2 Q Mr. Kenner began with a 10 percent interest. This  
3 document reflects him giving up 4 of 8 percent.

4 What happened to the other 2?

5 A There was one time prior that he sold 2 percent, and  
6 those funds went into operating.

7 Q And these funds went to Mr. Constantine; is that  
8 correct?

9 A Yes.

10 Q Nothing improper about that, was there?

11 MS. KOMATIREDDY: Objection.

12 THE COURT: Sustained.

13 Q Do you know what Mr. Constantine did with the  
14 interest that he got from Mr. Kennedy?

15 A I think that he sold that interest, and some of the  
16 money from the sale went into the company. And, I mean,  
17 it was Tommy's money, so --

18 Q So when you say Mr. Constantine gave a portion of the  
19 money that he made from the sale of those documents, it  
20 went back into Eufora; is that correct?

21 A Yes.

22 MS. KOMATIREDDY: Objection. That wasn't the  
23 testimony.

24 THE COURT: Overruled.

25 A Yes.

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1 Q By the way, let me deal with your contributions.

2 You said that when you signed the operating  
3 agreement you put \$20,000 into the company; is that  
4 correct?

5 A That's correct.

6 Q Is that the only money you put into the company over  
7 the life of its existence?

8 A No.

9 Q The company still exists; is that correct?

10 A Yes.

11 Q So between the time you put \$20,000 in pursuant to  
12 the operating agreement until today, how much money have  
13 you put into the company by way of other capital  
14 contributions or by loan?

15 A I don't know the exact number, but probably  
16 \$1.4 million.

17 Q And how did that go in, as a capital contribution or  
18 as a loan?

19 A As a loan.

20 Q You still owed that money today?

21 A Yes.

22 Q Where did you get that money?

23 A My business. Working hard and making it over time.

24 Some of it was borrowed when I needed it, or if the  
25 company needed it for payroll, I would borrow from family

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1 members and eventually pay it back. And now the loan is  
2 owed to you.

3 Q You mentioned earlier the operating agreement  
4 permitting a capital call; is that correct?

5 A What do you mean?

6 Q It's a poor question.

7 Are you familiar with the phrase "capital call"?

8 A Yes.

9 Q What is a capital call?

10 A When a company needs capital, all the members are  
11 legally obligated in order to fund the company to look  
12 forward. If they are not able to do so, they get diluted  
13 based on their percentage what the capital requirement is.

14 Q Who are the people that would be required, if called  
15 upon, to make that kind of capital contribution?

16 A All investors.

17 Q So if somebody paid 100,000 and became an investor  
18 and a capital call was made, they would be required to  
19 give a portion to that capital call; is that correct?

20 A Yes, depending what percentage they owned of the  
21 company.

22 Q During the life of Eufora until today, has a capital  
23 call ever been made?

24 A Not once.

25 Q Why?

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1 A Tommy and I argued about this. I thought that we  
2 should go to the investors, but Tommy never wanted to go  
3 back to the investors to do a capital call. We just  
4 funded it ourselves.

5 Q When you say "we funded it," were you aware how much  
6 money Mr. Constantine put into the business after it was  
7 formed?

8 A I think a total of \$3 million.

9 Q And do you know how much he is owed as you are  
10 testifying here today?

11 A I think that number is close to \$1.5 million.

12 Q Do you know where Mr. Constantine was able to secure  
13 his money that he put into the company?

14 A I know where the majority of it came from, yes.

15 Q Would you tell us from your knowledge, you know, how  
16 Mr. Constantine was able to secure money for a loan to the  
17 company?

18 A Prior to starting with Eufora, Tommy had been very  
19 successful and had a lot of assets. During the time we  
20 needed money, unfortunately, he had to sell those assets  
21 or mortgage property to fund that, so we never had to do a  
22 capital call so we could keep up with payroll.

23 Q Can you tell us some of the assets that was sold by  
24 Mr. Constantine to help run the company?

25 A I know of a couple properties. One in particular was

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1 a large parcel he owned in north Arizona, a 40-acre parcel  
2 that he mortgaged in order to fund the company, and also a  
3 helicopter sale.

4 Q Tell us about what knowledge you have regarding the  
5 helicopter sale.

6 A I know at one point Tommy had to sell or -- sell his  
7 helicopter at the time to help fund the company.

8 Q By the way, the property you described  
9 Mr. Constantine had to take a mortgage out to help fun the  
10 company, did it have a heliport on it?

11 A No. My understanding, that was the turnaround for  
12 the bus.

13 Q And what was it used for?

14 A The bus?

15 Q The turnaround.

16 A Just so that when you pulled into the garage, you  
17 could turn the bus around.

18 Q Why is it referred to as a heliport?

19 A I'm not sure who -- or why they refer to it --

20 Q Does a helicopter use that area to land on the  
21 property?

22 A To my knowledge, no.

23 Q By the way, were you familiar with some of the  
24 sponsors of Mr. Constantine's racing activities?

25 A Yes.

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1 Q Were any of those money saved by the sponsors  
2 contributed likewise by Mr. Constantine to Eufora?

3 A No directly, but I know Tommy borrowed or used some  
4 of his sponsorship money to help fund Eufora.

5 Q Can you give us some of the names of the sponsors you  
6 became familiar with over time?

7 A Playboy, Vonage, Uniden, BMW, Nissan, Palms Hotel,  
8 Taser International.

9 Q By the way, during the time that Eufora was in  
10 existence, again, up until today, did you ever take a  
11 salary?

12 A I got a salary I think for one month.

13 Q Do you remember when and why?

14 A It was right after we got funding from Mr. Nerguzian,  
15 and I think, again, I might have received two checks, but  
16 I think I only remember one of them.

17 Q How about Mr. Constantine? Do you recall if he was  
18 paid a salary during the life of Eufora?

19 A At the same time, I think he did receive a check, but  
20 those didn't last more than three months.

21 Q By the way, you told us that you were not devoting  
22 full-time to Eufora, you had another business; is that  
23 correct?

24 A Yes, I had my business that I started in 1998, and so  
25 I needed to make a living, so I spent probably 70 percent

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1 of my time working on Eufora and the other 30 percent  
2 working on my own personal projects.

3 Q Was Mr. Constantine devoting full-time to Eufora  
4 during this time period?

5 Was Mr. Constantine devoting full-time to  
6 Eufora? Did he have other activities?

7 A He had other activities, but what time period are you  
8 talking about?

9 Q Say between 2004 and 2007.

10 A Well, I know when we first started he was tenacious  
11 about getting Eufora started, and then around 2004, 2005,  
12 he started working on a project in Hawaii.

13 Q Do you know what the project was?

14 A I don't know details. I just know that it was a  
15 large land parcel, a really great opportunity. And I  
16 heard bits and pieces as people walked into the office  
17 that Tommy met with.

18 Q What was Tommy's connection with this land project in  
19 Hawaii?

20 A My understanding, he was trying to find a partner to  
21 develop the property and funding.

22 Q And during the times that you were present in the  
23 office, did you get to meet with any of the individuals  
24 that he was discussing the possibility with partnering  
25 with for the Hawaiian project?



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1 A I was not directly involved in the meetings, but  
2 afterwards Tommy would say Meritage Homes, which was a  
3 large developer in Arizona -- or a gentleman that was a  
4 large developer of apartment buildings, his name was Ken  
5 Losch. After they left, Tommy would tell me who they  
6 were.

7 Q Do you know a person by the name of Craig Johnson?

8 A Yes, that was the individual that introduced me to  
9 Tommy.

10 Q Did Mr. Johnson, at or about this time, have anything  
11 to do with the raising of moneys for the Hawaii projects?

12 A He was in the office a lot and was involved in those  
13 meetings.

14 Q Do you know what role he played and what he did?

15 A He was working for a mortgage company at that time,  
16 so I don't know exactly what role he played in that piece  
17 of -- that area, but I assume he had a value of some sort.

18 Q How long do you recall him working in that capacity?

19 A He was there for -- I think that window was maybe  
20 24 months or so. And he was in and out of the office and  
21 was present in a lot of the meetings when they were trying  
22 to raise moneys for the Hawaiian project.

23 Q Did you have a discussion with Mr. Constantine about  
24 his raising money for a Hawaiian project?

25 A Yes, I did. You know, we would kind of argue about,

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1 you know, why he wasn't focusing on the main business, and  
2 we would have an argument about it and -- just how I had  
3 to work on making a living, so did Tommy. So he had to  
4 work on other projects also.

5 Q And was this a single episode or was it a series of  
6 conversations with Mr. Constantine over this period of  
7 time?

8 A No, we had many conversations about it.

9 Q Did any of them ever become heated?

10 A Oh, yeah.

11 Q And in what way?

12 A Probably a couple weeks that went by that we didn't  
13 talk to each other.

14 Q What was your position in regards to what he was  
15 doing?

16 A After Tommy would actually sit me down and would  
17 explain to me what he's working on and why he was doing  
18 it, I wouldn't complain --

19 MS. KOMATIREDDY: Your Honor, I object.

20 May we have a sidebar?

21 (Whereupon, at this time the following took  
22 place at the sidebar.)

23 (Continued.)  
24  
25

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1 MS. KOMATIREDDY: The statements are being  
2 offered for the truth, not for representations made to  
3 investors. They are not indicative of any state of mind.

4 The actual statement themselves have to do with  
5 what Mr. LaRusso purports to be the facts of  
6 Mr. Constantine raising money for the truth of whether he  
7 in fact met with investors and raised money, which was a  
8 disputed issue.

9 THE COURT: He can testify who came in and out  
10 of the office. That is not hearsay.

11 In terms of what Mr. Constantine told him, it  
12 goes to Mr. Constantine, his potential state of mind.

13 The Government is saying there were no efforts  
14 being made and Mr. Constantine was pretending to make  
15 efforts, if he was having discussions with a business  
16 partner regarding his need to do that. But if you want me  
17 to give a limiting instruction, I will.

18 MS. KOMATIREDDY: We would appreciate that.

19 THE COURT: All right.

20 (End of sidebar conference.)

21 (Continued.)

22

23

24

25

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1 THE COURT: Members of the jury, let me give you  
2 a limiting instruction.

3 You heard testimony in the case, and to the  
4 extent that Mr. D'Ambrosio is relaying what  
5 Mr. Constantine told him he was doing in the Hawaii  
6 project, he cannot offer those statements for the truth,  
7 but they can be offered on the issue of Mr. Constantine's  
8 state of mind at the time. You can only consider it for  
9 that purpose.

10 Go ahead.

11 Q I would like you to tell us from your point of view  
12 the nature of these discussions with Mr. Constantine about  
13 his activities raising money for the Hawaiian project in  
14 reference to his responsibilities with the company.

15 A He was spending a lot of time meeting with people,  
16 and the majority of his focus was raising money for these  
17 development projects in Hawaii.

18 Q And what was the position you took?

19 A I was upset, I think for a number of different  
20 reasons.

21 One, I wasn't benefitting from that. And number  
22 two, I thought we had a great opportunity with Eufora, and  
23 I was wanting him to spend more time focusing on Eufora.

24 Q By the way, did you ever invest in -- you said you  
25 didn't have anything to do with Hawaii. But what about

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1 Mexico? Did you make any investments at or about this  
2 time in Mexico?

3 A I gave a 100,000 investment in Mexico. I don't have  
4 the exact date, but either the end of 2005 or in 2006.

5 Q Tell us the background to that investment.

6 A I knew there was another project in Cabo that was an  
7 amazing piece of property right on the beach, five miles  
8 of beachfront property, 1500-acre parcel, and they were  
9 working on developing the project. And at that time I  
10 decided to contribute \$100,000.

11 Q And from whom did you learn this information?

12 A From Tommy.

13 Q And to whom did you make the investment?

14 A I sent the money -- I'm 90 percent sure it went to a  
15 Mexican bank, a Mexican entity.

16 Q What happened to your investment?

17 A My investment, I think, in my opinion and from what  
18 I've learned, was never recognized by Ken Jowdy.

19 Q And did you make any efforts to recover the money  
20 that you invested?

21 A I did not. From what I've learned, I was not going  
22 to spend \$200,000 to chase after my 100. When I knew that  
23 the group as a whole that has invested, from what I know,  
24 tens of millions of dollars was not making any headway, I  
25 was not going to make any headway by chasing my 100,000

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1 investment.

2 Q By the way, did you come to learn -- do you know Phil  
3 Kenner, by the way?

4 A Yes.

5 Q Do you see him here in court?

6 A Yes.

7 MR. HALEY: Identification conceded.

8 THE COURT: Identification conceded.

9 Q Tell us how you knew Mr. Kenner during this period of  
10 time.

11 A I met Mr. Kenner through Tommy Constantine.

12 Q Let me have you describe your relationship with him  
13 during this period of time.

14 A Over the course of probably 2001 to 2008, Tommy and  
15 Phil were working on development projects. When we needed  
16 capital, Phil opted to buy more into the company because  
17 he saw what we were working on and what we were doing. I  
18 didn't have a close personal relationship with Phil, but  
19 he was in and out of the office, and that's pretty much  
20 it.

21 Q Did you come to learn from whom the moneys Mr. Kenner  
22 was putting into Eufora came from?

23 A Later on I learned that it was from investors, and  
24 the majority of them being professional hockey players.

25 Q As a member of Eufora, do you know how these hockey

**D'Ambrosio - Direct/LaRusso**

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1 players held their interest in Eufora?

2 A Yes. They held their interest in Phil Kenner's  
3 entities, and there was a number of them. And that's how  
4 they held their interest, not directly into the company.

5 Q One of the entities that held the hockey players'  
6 interest was AZ Eufora Partners?

7 A Yes.

8 Q Do you know a person by the name of C.R. Gentry?

9 A Yes.

10 Q Tell us how you came to know or meet Mr. C.R. Gentry.

11 A Unfortunately, I met C.R. Gentry through one of my  
12 employees. She went to a networking event in north  
13 Scottsdale; she met the gentleman. I don't know what the  
14 event was for. The next day she met some interesting guys  
15 that might be able to help with raising money.

16 And I'm not sure how soon after, but very  
17 shortly after that I met with Mia, M-I-A, myself, met with  
18 C.R.

19 Q What was Mia's relationship with Eufora?

20 A She was the VP of operations.

21 Q How long was she VP of operations of Eufora?

22 A She started with us in -- we launched in 2003, so a  
23 little before 2003. But she has been with the company  
24 since day one.

25 Q In regards to Mr. Gentry, where did you meet him at

**D'Ambrosio - Direct/LaRusso**

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1 the time?

2 A At a home in north Scottsdale.

3 Q Tell us briefly what you discussed with him at that  
4 point.

5 A I went over the Eufora business and the business  
6 model and what we were currently doing, and wanted to see  
7 if there was any interest there to help us raise money.

8 Q And did you come to some kind of agreement with  
9 Mr. Gentry at that point?

10 A Originally the agreement was based on the success of  
11 them raising money, but eventually I ended up hiring C.R.  
12 and -- at that time against Tommy's wishes.

13 Q When you say "hiring" him, hiring him in what  
14 capacity?

15 A At that time he was being paid as a consultant to  
16 help raise money.

17 Q Had he been successful in raising any money at that  
18 point?

19 A Over his whole tenure, he was not successful in  
20 raising money.

21 Q There came a time when you discussed with Mr. Gentry  
22 hiring him in a different capacity?

23 A Yes.

24 Q What was that?

25 A Eventually he was president and CEO.



**D'Ambrosio - Direct/LaRusso**

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1 Q You also mentioned a few moments ago over  
2 Mr. Constantine's objection. What do you mean by that?

3 A Well, you know, C.R. did a really good job on selling  
4 me his abilities, and I was desperate at the time.  
5 Unfortunately, Tommy was out racing, so I didn't have any  
6 other options, and I really didn't see how it could harm  
7 us. And I was paying out of my own pocket, and I really  
8 didn't see any downside.

9 But Tommy told me I was wasting my time and  
10 could tell that C.R. just didn't have the pedigree for  
11 what we needed.

12 Q When you say you were desperate with respect to  
13 Mr. Gentry, the hiring, what do you mean by that?

14 A In my opinion, we were desperate for funding and  
15 advertising dollars, and we needed to raise capital.

16 Q How did Mr. Gentry and why did Mr. Gentry become an  
17 officer in the company after not providing any funding?

18 A I think the best way to explain how it happened was  
19 Tommy was successful in finding us a lender, and at that  
20 time Tommy was still racing, and we needed someone to get  
21 the appropriate documents to our lender. And that lender  
22 knew that Tommy was out racing, so that lender forced us  
23 to kind of have C.R. as president and CEO.

24 Q Who was this lender?

25 A His name is Brent Nerguzian.

**D'Ambrosio - Direct/LaRusso**

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1 Q Did he have a company?

2 A Neptune.

3 Q What was his relationship to you and Mr. Constantine  
4 at the time, if anything?

5 A Very close personal friend of Tommy, and Tommy is the  
6 godfather of three of his children.

7 Q By the way, where was Mr. Gentry living during the  
8 period of time that he was working for Eufora?

9 A He was living with me.

10 Q How long did he live with you?

11 A I think he worked for us for a total of three years,  
12 and I would say he moved in probably after the first two  
13 months of being a consultant and traveling back and forth  
14 from Canada.

15 I had a home, and I had a home that, you know,  
16 was -- had extra bedrooms, and I offered for him to stay  
17 with me.

18 Q How long did he stay with you?

19 A Pretty much most of the three years, besides maybe  
20 the first couple months. I don't know exactly.

21 Q How much rent did he pay you, if any?

22 A Zero.

23 Q You said back and forth to Canada.

24 What was the need for Mr. Gentry to travel into  
25 Canada?

**D'Ambrosio - Direct/LaRusso**

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1 A That is where he resided and where his wife and  
2 family was.

3 Q How long -- let me back up and rephrase that.

4 During the time that Mr. Gentry worked for  
5 Eufora, did he work five days a week?

6 A There might be one or two weeks that he would maybe  
7 work five days, but I would say 70 percent of his time for  
8 over a month would be in Canada. But there might have  
9 been a particular situation where he may have needed to  
10 stay a day or longer, that could be a five-day work week,  
11 but more than half was in Canada.

12 Q What salary was Mr. Gentry paid?

13 A I know over the course of three years, close to  
14 300,000. And the reason I don't have the exact salary is  
15 we were struggling for funding. Sometimes he would have  
16 to wait in order to be paid. So approximately \$300,000  
17 over the course of three years.

18 And he also subsidized some of his hourly work  
19 and basically sliced out a piece of the company for  
20 himself.

21 Q How did he go about doing that?

22 A He did it with -- well, at the time when he was  
23 working on organizing the loans for the lender, he gave  
24 himself two and a half percent we later found out that he  
25 felt he was entitled to.

**D'Ambrosio - Direct/LaRusso**

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1 Q When you say "he gave himself two and a half percent"  
2 of the business, what do you mean?

3 A He shaved out two and a half percent of the company  
4 while we were going through the funding process, because  
5 at the time that was the first time any of the  
6 shareholders or investors were diluted, when we got our  
7 loan. So he sliced out a piece of the company.

8 And he came to me and said Tommy was okay, and  
9 he told Tommy that I said it was okay. By the time we  
10 uncovered it, neither of us said it was all right.

11 Q Did he need to make any capital contribution for that  
12 percentage?

13 A No.

14 MR. LARUSSO: Your Honor, I was going to go into  
15 the Nerguzian loan. Would this be an appropriate time?

16 THE COURT: We'll take a lunch break. We'll  
17 reconvene at 2 o'clock. Do not discuss the case.

18 (Whereupon, at this time the jury exits the  
19 courtroom.)

20 THE COURT: Everyone can be seated. You may  
21 take a break.

22 THE WITNESS: Thank you.

23 THE COURT: So, Mr. LaRusso, so we can avoid any  
24 delays this afternoon, I was looking at the Government's  
25 letter, and he has explained to me regarding this

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1 recording how you are trying to get in the recording  
2 through this witness.

3 What are you trying to do?

4 MR. LARUSSO: I'll give the Court as much  
5 background as I can. I don't have it completely.

6 This was a recording provided to us by the  
7 Government. My understanding, they got it from Mr. Rizzi.  
8 It was a voice mail put on his telephone on June 28th of  
9 2010. Mr. D'Ambrosio was present in the Eufora offices  
10 when Mr. Constantine made the telephone call, so he knows  
11 what message was being left on the phone.

12 THE COURT: This is Mr. Constantine leaving a  
13 voice mail on Mr. Rizzi's phone in his presence?

14 MR. LARUSSO: Yes, that's what happened, your  
15 Honor. I went through this with him last night.

16 THE COURT: What is the relevance? What is on  
17 the message?

18 MR. LARUSSO: It's returning money to Mr. Rizzi.  
19 He's one of the investors between Mr. Kaiser and  
20 Mr. Privitello. And there's a dispute, I guess,  
21 aggressive dispute, regarding how the moneys that were  
22 invested was treated by Mr. Constantine.

23 We're arguing the point in time they did not  
24 want the money back, but they had other ulterior motive.  
25 Also, Mr. Constantine's state of mind. He wasn't looking

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1 to steal this money from the individuals. He was looking  
2 to give it back, and they didn't want it.

3 THE COURT: This is prelitigation?

4 MR. LARUSSO: Prelitigation, before the  
5 shareholders meeting, before the Stolper letter when he  
6 signs up all the hockey players. This is June 28, 2010,  
7 your Honor.

8 THE COURT: What is the Government's position?

9 I read the Government's letter, but I did make  
10 rulings with regards to the 2012 -- and discussions about  
11 returning money in 2012 in the context of civil  
12 litigation, but this seems to be much closer in time to  
13 the time of the investment.

14 MS. KOMATIREDDY: Your Honor, we would consider  
15 this prelitigation based on our investigation. Mr. Rizzi  
16 at that point had threatened litigation against  
17 Mr. Constantine. So it's a self-serving statement that  
18 occurs after that threat.

19 He alluded to both reporting Mr. Constantine to  
20 the police and/or other measures for civil litigations.  
21 This is approximately two or three months before the  
22 complaint was officially filed, but it is already in the  
23 works. This is at a point after the money is stolen, six  
24 months after, where the investors are looking for answers.  
25 They are taking action. And there is a statement made in

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1 the context of that very live dispute, and it is  
2 self-serving hearsay.

3 THE COURT: I'll overrule the objection. I  
4 think those are arguments that go to the weight as to  
5 Mr. Constantine's state of mind.

6 But I think at that point in time it could be  
7 much closer to the investment, that it has some probative  
8 value with respect to his state of mind.

9 If the Government wants to point out during the  
10 trial there may be other motivations, altruistic  
11 motivations of Mr. Constantine's offer, the Government is  
12 free to do that, but I don't think it should be precluded  
13 on that ground.

14 Any other issues you expect with respect to his  
15 testimony?

16 MR. LARUSSO: I hope not, Judge. I went through  
17 it. We don't even have that many more exhibits with him.  
18 Mostly oral testimony.

19 THE COURT: All right. Have a good lunch.

20 MR. MISKIEWICZ: Your Honor, there is actually  
21 one thing. We still have nothing from Mr. LaRusso  
22 regarding any communications, contemporaneous or  
23 otherwise, between Mr. D'Ambrosio and any of the material  
24 that he's referring to.

25 THE COURT: I'll be really unhappy if the

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1 Government asks Mr. D'Ambrosio if he has texts or anything  
2 else --

3 MR. LARUSSO: Judge, here's what is happening.

4 When we broke on Thursday, there were seven or  
5 eight things I had to do. I asked that we look at all the  
6 e-mails that we have available and start printing them  
7 out.

8 Mr. Conway was able to look at and make a  
9 decision these should be turned over.

10 I understand yesterday there should have been a  
11 stack sent, at least -- I don't know how many. But we're  
12 still working on the project and still printing them out.  
13 This is not an easy project --

14 THE COURT: Have you gotten anything from  
15 Mr. Conway?

16 MS. KOMATIREDDY: Your Honor, we haven't  
17 received Mr. D'Ambrosio's statements that pertain exactly  
18 to what he's testifying. He's testifying about the whole  
19 history of Eufora, the ideas and this entire chronology.  
20 We've got no statements related to Hawaii, no statements  
21 to them having arguments about how Mr. Constantine is  
22 spending his time and money.

23 MR. LARUSSO: If we have those we'll turn them  
24 over, but we don't. We were trying to comply with the  
25 Court's time frame and --



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1 THE COURT: Whatever you have now, Mr. --

2 MR. LARUSSO: In addition to what has already  
3 been turned over, we have another stack.

4 THE COURT: All right. Thank you.

5 (Whereupon, a recess was taken.)  
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A F T E R N O O N      S E S S I O N

THE CLERK: All rise.

THE COURT: Please be seated.

MR. LARUSSO: Your Honor, may I raise a possible problem? I guess I should have seen it last night.

But in going over my notes with the witness again during the lunch period, one of the questions I'm going to be asking him deals with the board of directors firing Gaarn and Gentry.

He was on the board of directors and he signed the authorization for their firing and the reasons that he gives me are threefold; the two-and-a-half percent equity that Gentry had given to himself, the secret negotiations to buy the Nerguzian loan, and the third one I'm rethinking and was going say they uncovered an illegal fraud in regards to the Gaarn sale of his shares and then the monies going into his own account. That was the third reason.

That's kind of like the ultimate issue the jury will have to make a determination on. I'm a little concerned that as it comes out there may be an objection and I don't think it's improper because it's why he led to their firing, but I think it's highly prejudicial in regards to -- so obviously I'm struggling with that

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1 reason, Judge. It's what happened, it's what he told me.  
2 He's been consistent in regards to it.

3 I'm kind of like thinking that if there's any  
4 possibility of having some kind of a stipulation regarding  
5 maybe an improper stock transaction, something that  
6 doesn't take the issue away from the jury.

7 MR. HALEY: Judge --

8 MR. LARUSSO: That's my concern, Judge, at this  
9 point.

10 MR. HALEY: Yes, I would agree that this lay  
11 witness is about to express his opinion within the context  
12 of the reasons why he made a determination to fire certain  
13 people, and then his opinion will be one of those reasons  
14 was I perceived an improper, illegal stock transfer.

15 That's exactly what goes to an ultimate issue  
16 for this jury to make a determination on. Apart from  
17 that, Judge, he expresses an opinion on that basis?

18 MR. LARUSSO: It's not an opinion, Judge. It's  
19 why he took -- it's why he fired both Gaarn and Gentry.

20 THE COURT: Let me ask, because the government  
21 is going to cross him, is he going to be asked questions  
22 about the Gaarn interest and what was transferred or not  
23 transferred or not?

24 MR. MISKIEWICZ: Initially we hadn't anticipated  
25 that happening because all the discovery we had suggests

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1 that Mr. Gentry at least was not fired for any other  
2 reasons that Mr. LaRusso is now articulating which, again,  
3 brings us back to the lack of reverse discovery.

4 We've seen the transcript of the conference call  
5 where Mr. Gentry was let go and what Mr. Constantine says  
6 in that conference call with I think this witness present  
7 is that he was released because they ran out of money.

8 So the fact that now we have this dual set of --  
9 I have no idea where he's getting this from. I don't know  
10 when he's referring to the firing. He's released in July  
11 2009.

12 There's a conference call. Mr. Constantine  
13 makes very clear why he's being released, because they  
14 don't have any money. That's it.

15 So if there's a whole set of other explanations  
16 and documentation, we haven't gotten it and we're really  
17 now going to be at the point where we have no choice but  
18 to ask for an opportunity to review all this material,  
19 talk to other witnesses, find out whether or not any of  
20 these documents are true.

21 MR. LARUSSO: That's not true in this sense.  
22 I'm not saying you misrepresented to the Court. A little  
23 more background on this may help the Court understand.

24 THE COURT: I don't need background. We've got  
25 to keep the case moving.

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1 I have to say, Mr. LaRusso, believe me, I know  
2 you have a lot going on. I know you're making efforts to  
3 comply with my order that you turn over relevant  
4 documents.

5 But I would find it hard to believe that you and  
6 your client just decided a few days ago that  
7 Mr. D'Ambrosio was going to be one of your witnesses I  
8 assume and he's someone probably for months, if not for  
9 years, that you have known is an important witness for  
10 your client.

11 So these documents you're turning over during  
12 the lunch break, I understand it's hard to do that now  
13 with all of the other things you have going on, but I  
14 don't know why this wasn't done many, many weeks ago. I  
15 don't think this is a surprise in discovery as he's one of  
16 the founding members of Eufora.

17 MR. MISKIEWICZ: Your Honor, by the way, when I  
18 say we haven't seen this, he did turn over a bunch of  
19 material just before the break. None of it has anything  
20 to do with what Mr. LaRusso is now referring to about  
21 these reasons. If there is documentation, we still  
22 haven't seen it.

23 MR. LARUSSO: Your Honor, the reason why there's  
24 no documentation here is you got -- and the government has  
25 it. There is a transfer. There's a decision by the board

1 of directors and lays out why they're fired.

2 And I asked the witness, why isn't it spelled  
3 out, these reasons? Because that's the public reason.  
4 This is what we didn't want in the public record. He's  
5 been consistent in regards to that. There are no  
6 documents in regards to what he's saying, Judge.

7 THE COURT: You don't care about the reasons  
8 with respect to Mr. Gaarn. You don't care about that.  
9 You don't need to bring that out. It's part of his  
10 answer, is that why you're raising it with me?

11 MR. LARUSSO: It's important from our  
12 perspective as to the uncovering of those transactions and  
13 my client's non-involvement in them.

14 That's one of the things that we've been  
15 scrupulously trying to elicit throughout the trial and  
16 Gaarn himself said he knew of no involvement of  
17 Mr. Constantine in the \$700,000 transfers as far as I  
18 know.

19 MR. HALEY: Which, your Honor, ends the issue.  
20 What do I mean by that? This record is replete without  
21 contradiction that as relates to the Gaarn stock  
22 transfers, Tommy Constantine had no involvement in the  
23 Gaarn stock transfers. Mr. Gaarn testified that he didn't  
24 have any involvement. As a matter of fact, he said  
25 repeatedly he did not based on a barrage of questions by

1 Mr. LaRusso. My client testified that Tommy Constantine  
2 had no involvement in the Gaarn stock transfers as a  
3 result again of my questioning and of a barrage of  
4 questioning by Mr. LaRusso as well.

5 I might join in the chorus of the government.  
6 We have not either received this level of discovery to be  
7 able to address this issue. If now this witness is going  
8 to express an opinion that one of the reasons that they  
9 discharged Gentry and Gaarn is because in their view there  
10 was some improper or illegal transfers as relates to the  
11 Gaarn transfers, that opens up a Pandora's box that  
12 becomes a trial within a trial.

13 And again, Judge, I don't think that based upon  
14 this record, it is entirely prejudicial, it is going to an  
15 ultimate issue of fact, and it doesn't in any way in my  
16 opinion address legitimately any aspect of the defense of  
17 Tommy Constantine.

18 THE COURT: I think the way to handle the  
19 situation is I'll tell the witness that he can describe  
20 the first two reasons for what he says is their decision  
21 to terminate Mr. Gentry. Obviously, the government can  
22 cross if there was another reason related to money.

23 I'll tell him, to the extent one of the reasons  
24 was that his view that it was an illegal transfer with  
25 respect to Mr. Gaarn, any probative value of that which I

1 think is extremely limited, would be substantially  
2 outweighed by a danger of unfair prejudice to Mr. Kenner  
3 having him opine on that.

4 If you want to ask him factual questions related  
5 to Gaarn and the transfer independent of the reasons for  
6 firing Mr. Gentry, you can obviously ask him were you  
7 involved in any transfer to Mr. Gaarn. If he says no,  
8 that's fine. Did Mr. Constantine ever tell you anything  
9 regarding any transfers to Mr. Gaarn. If you want to  
10 establish factually your client had no involvement, that's  
11 fine, but for him to conclude or to opine I conclude there  
12 was an illegal transfer is prejudicial.

13 MR. LARUSSO: He didn't opine. He was told by  
14 Mr. Constantine who examined the books and records exactly  
15 what happened and then Mr. Semple the accountant came in  
16 and verified it by his examination of the books and  
17 records.

18 THE COURT: Is that accountant going to testify?

19 MR. LARUSSO: This is the one that took his  
20 family to Coronado and indicated he will be flying in  
21 tonight. I've got my fingers crossed that he does. Yes,  
22 he is. He's a forensic accountant.

23 MR. HALEY: There also may also be, Judge,  
24 questions asked of Mr. Semple that may result in his need,  
25 quite frankly, this is not a threat, it's an observation,



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1 for him to consult independent counsel before he answers  
2 some of those questions. It goes directly to his  
3 credibility and information I have in connection with the  
4 manner in which they obtained a settlement with Northern  
5 Trust, representations made by Northern Trust.

6 I alert the Court to that issue only because it  
7 is an issue from my perspective.

8 MR. LARUSSO: Judge --

9 MR. MISKIEWICZ: Your Honor, also, if I may ask,  
10 when does the firing occur, according to Mr. LaRusso's  
11 information?

12 MR. LARUSSO: There's a board of directors  
13 decision that's made and it's a document I turned over to  
14 you a while back.

15 MR. MISKIEWICZ: When?

16 MR. LARUSSO: I don't know the date. It's on  
17 the board of directors -- July 12, 2010. It's Defendant's  
18 Exhibit 271.

19 Judge, I apologize to the Court. I know how  
20 important it is to keep the jury busy.

21 This whole transaction that we're talking about  
22 between Gaarn and Gentry at the time it was uncovered, it  
23 was what the government alleged in the first indictment.

24 They alleged that the hockey players, some  
25 hockey player bought shares back in 2002, 2003, and those

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1 shares, the monies that that hockey player supposedly was  
2 buying was taken by Jowdy, given to Mr. Kenner through  
3 LMJ, and then they tracked the history of those shares.

4 That's why if you remember on the tape there was  
5 a reference to the hockey players applying their own  
6 shares.

7 That was the government's theory in the first  
8 case. So this isn't coming as a surprise to the  
9 government. They know exactly what was going on back in  
10 2010, that these shares that the hockey players are  
11 alleged to have bought -- I'm sorry, Mr. Haley, I'm just  
12 saying what the record is. I'm sorry if I'm annoying you.  
13 I don't mean to do that. It's a complete picture in terms  
14 of this is not coming as a surprise. That's my point,  
15 Judge.

16 MR. HALEY: I want the opportunity to call Tommy  
17 Constantine to the stand. I have a right to confront  
18 these accusations being made by Tommy Constantine that at  
19 least from what I'm hearing Mr. D'Ambrosio knows it  
20 because this is what Tommy Constantine told him.

21 MR. MISKIEWICZ: Also, your Honor, there is very  
22 much again a deep question about the authenticity of any  
23 of these notes which we do not have because there is a  
24 recorded conference call in July 2009. That's when C.R.  
25 Gentry is essentially let go. He continued to work as a

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1 consultant. He ceases to function as a CEO.

2 And it's very much a part of our case when --  
3 and the only reason we offered a clip from the Privitello  
4 Constantine conversation is because when Constantine says  
5 when your money came in December 7, 2009, my CEO told me  
6 we couldn't accept it. He's lying, because he is the CEO  
7 as of July 2009.

8 So I'm troubled by a witness who is going to be  
9 testifying about an event that does not comport with any  
10 of our discovery we provided and certainly not with C.R.  
11 Gentry who, by the way, who was the guy who was fired or  
12 for that matter this recording and conference call where  
13 the defendant is saying I'm taking over as CEO in July  
14 2009. This is very bizarre. It's just bizarre.

15 Also, we object. I don't know about the  
16 confrontation issue. I do object to Mr. D'Ambrosio  
17 testifying about material that basically is spoon fed him  
18 by the defendant. It's just essentially hearsay and we  
19 submit it doesn't fall under any exception.

20 MR. LARUSSO: Mr. Miskiewicz has his view of the  
21 evidence and he can question the witness if he wants with  
22 regard to that.

23 In this particular case, Mr. Miskiewicz should  
24 know that it was C.R. Gentry that sent an e-mail to  
25 Mr. Kaiser and said; your shares are subject to approval

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1 by the board of directors, and it wasn't Mr. Constantine,  
2 it wasn't Mr. D'Ambrosio. That was C.R. Gentry who sent  
3 the e-mail and the board of directors never approved it  
4 and that's what the witness will testify to.

5 This allegation that there's some kind of  
6 collusion here to manufacture testimony, I haven't seen  
7 it.

8 I raised this issue, Judge, as an abundance of  
9 caution because I know it's an ultimate issue in the case.  
10 I felt it was relevant for him to explain why Gaarn and  
11 Gentry were dismissed and technically it should get in.  
12 It is highly prejudicial, and I understand that, and my  
13 question is in terms of dealing with it.

14 THE COURT: Again, if he's going to testify  
15 factually as to what Mr. Gaarn and/or Mr. Gentry did or  
16 did not do, that's one thing, but him throwing out an  
17 opinion like I concluded that there was illegal conduct  
18 and, therefore, I fired him is an ultimate issue and we  
19 don't care what he concluded.

20 So that's my concern is that he's going to sit  
21 there and say I concluded it was an illegal transaction.  
22 If he has facts that you want to bring to the Court's  
23 attention through his interaction with Mr. Gentry through  
24 documents that he saw, that's one thing. We don't care  
25 what his conclusion is.

1 MR. LARUSSO: I guess the point is I'm not  
2 looking to have him give a conclusion as to the reasons  
3 for the discharge. It's somebody told him this and he  
4 accepted it.

5 THE COURT: Then you have to call again -- if  
6 you're trying to establish that there was an improper  
7 transaction because he was told it by another witness who  
8 is going to testify tomorrow morning, is that who he was  
9 told by?

10 MR. LARUSSO: No. Mr. Constantine told him.  
11 Mr. Semple doesn't come on later until after he looks an  
12 at all of the book and records.

13 MR. HALEY: Your Honor, with all due respect to  
14 Mr. LaRusso, technically it's not admissible. I don't  
15 know what he means technically it's admissible. I think  
16 the record is crystal clear.

17 MR. LARUSSO: The point, Judge, it's not being  
18 offered for the truth. It's being offered to explain why  
19 what he did was to sign off on the board of directors  
20 dismissal of both Gaarn and Gentry in July 2010. That's  
21 what that's there for, no other reason.

22 I bring it up because I wrestled with it before,  
23 thought it was okay, and then I looked at it again and I  
24 said, you know what, I should bring it up to the Court  
25 because it deals with the ultimate issue in the case.

1 MR. HALEY: Your Honor, his state of mind is not  
2 an issue here. Mr. D'Ambrosio's state of mind is not an  
3 issue here, such that there may be an exception to the  
4 hearsay rule.

5 So to say that we're just trying to explain  
6 things, I don't know. I'm befuddled by that argument,  
7 Judge. I don't know how you then ever preclude someone  
8 from testifying as to an ultimate issue of fact under such  
9 circumstances when the answer is I'm just trying to  
10 explain things.

11 THE COURT: Whatever probative value this has,  
12 and I view it as extremely limited, there's no probative  
13 value as to his state of mind at the time.

14 To the extent there is an attenuated probative  
15 value as to Mr. Constantine's state of mind for telling  
16 this to him and, therefore, he concludes the same, I find  
17 that the probative value is substantially outweighed by  
18 the danger of unfair prejudice to the jury concluding that  
19 it is being offered for the truth of the matter.

20 There is no need to do this because, as  
21 Mr. Haley pointed out, there is no -- you can correct me  
22 if I'm wrong, Mr. LaRusso, there is no allegation that  
23 Mr. Constantine was involved with respect to the situation  
24 with Mr. Gaarn, right? There's no allegation.

25 MR. LARUSSO: Right now, I look at the evidence

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1 and I agree with Mr. Haley 100 percent. I don't know what  
2 the Government's position is going to be so...

3 THE COURT: In terms of Mr. Constantine you  
4 mean?

5 MR. LARUSSO: In regards to this transaction.

6 THE COURT: In terms of Gaarn. Is the  
7 government going to argue to the jury that Mr. Constantine  
8 was involved in Mr. Gaarn's transactions?

9 MR. MISKIEWICZ: I think it's pled in the  
10 indictment as to both of them were participating in those  
11 diversions.

12 I agree with Mr. Haley that that's -- Mr. Gaarn  
13 wasn't in a position to know and testified he didn't know  
14 anything about the -- whether or not Constantine was  
15 involved.

16 We intend to argue that this is part and parcel  
17 of the conspiracy and given the way the money flows back  
18 and forth this was essentially Mr. Constantine allowing  
19 Mr. Kenner to cash out of Eufora and make some of the  
20 money back that he shovels in the direction of  
21 Mr. Constantine.

22 So that's our theory. That's how it's pled in  
23 the indictment.

24 MR. LARUSSO: Judge, I think that's the concern  
25 I have is that the government is going to make that

1 argument without the evidence to put Mr. Constantine into  
2 this illegal transaction that Mr. Gaarn and Mr. Gentry  
3 were involved in.

4 They even have a chart, Judge, where they show  
5 monies -- and I don't know the number of it -- but they  
6 show monies going from Gaarn to Kenner to Mr. Constantine  
7 and it's clear that the purpose of that chart is to  
8 establish that Mr. Constantine is receiving proceeds from  
9 these illegal transactions.

10 That will then dovetail into the argument that  
11 Mr. Miskiewicz just made, that it's part of the conspiracy  
12 and Mr. Constantine is as responsible for what happened  
13 regarding the sales by Mr. Gaarn and the ultimate  
14 distribution of the money.

15 I could deal with part of that on summation, but  
16 my point is that all of this evidence that Mr. Constantine  
17 uncovers these transactions, discloses it publicly. Even  
18 if it's not true, it certainly goes to what his state of  
19 mind is.

20 Mr. D'Ambrosio says Mr. Constantine, I've known  
21 him so long, told me that these transactions are done by  
22 them. Why would he publicly disclose transactions that he  
23 had nothing to do with if in fact he had nothing to do  
24 with them?

25 So intent at this point is probably the most



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1 critical part, and knowledge. Knowledge, it goes hand and  
2 hand. Did he have knowledge of these transactions? Was  
3 he receiving money from these transactions knowing that  
4 they were improper? If he knew and publicly disclosed  
5 that they were improper, wouldn't that negate a finding of  
6 his involvement?

7 So this is why when I initially discussed this  
8 with Mr. D'Ambrosio I said, this is good, it goes right to  
9 the heart of the issue.

10 Mr. Haley, I really apologize if I'm disturbing  
11 you.

12 MR. HALEY: I apologize.

13 MR. LARUSSO: I have an argument I have to make.  
14 Please. I apologize for the comment. It's disturbing to  
15 hear the pounding at the side of the table.

16 What I'm seeking to offer this, Judge, it's on  
17 that point. I'm trying to get the jurors to distance  
18 themselves as far as I possibly can from the 700,000 with  
19 relevant evidence.

20 And if you look at it in isolation, oh, sure,  
21 it's highly prejudicial. It goes to the ultimate issue,  
22 but it also goes to whether my client had intention to  
23 steal the money that went from Gaarn and Kenner to him.

24 I think it's a close question. I brought it up  
25 to the Court because of my concern for it and didn't want

1 to have it come out in front of the jury and create a  
2 problem possibly. That was the reason I'm trying to offer  
3 that testimony, Judge.

4 It sounds at first blush, my God, that's the  
5 ultimate issue in the case. Yet, from one side of the  
6 view it's the ultimate issue in the case but on the other  
7 side it's relevant to whether my client was involved  
8 knowingly and intentionally.

9 MR. MISKIEWICZ: Your Honor, if I could  
10 supplement my objection.

11 If Mr. D'Ambrosio had firsthand knowledge that  
12 there were transactions that were somehow impermissible  
13 under their own operating agreement of some kind, I don't  
14 think we would have an objection or there would be any  
15 objection here.

16 He's not a witness who's qualified to say that  
17 he had any of that information firsthand. All he can  
18 apparently say is this is what he was told by  
19 Mr. Constantine and he's told that by Mr. Constantine at  
20 the same moment that the Stolper lawsuit is beginning and  
21 not too far from the moment in which he makes reference in  
22 that Home Depot tape to the fact that he's aware of the  
23 \$700,000 that was stolen through Mr. Gaarn.

24 So that's about all I want to add to everything  
25 else that we said and Mr. Haley said as to why this is

1       improper.

2                   MR. HALEY: Your Honor, on the rarest occasion  
3       in recent memory for me, I would join in the government's  
4       argument in that respect.

5                   I think your Honor was correct in your Honor's  
6       determination previously that whatever relevance there may  
7       be is far outweighed by the prejudicial impact.

8                   I think your Honor is also correct. It's one  
9       thing if he's testifying to matters of fact based upon his  
10      position that he held with Eufora in connection with  
11      documents that he may have created or he may have  
12      witnessed being created, things of that nature, but apart  
13      from that, I think the record is replete with our basis  
14      for our objection.

15                  MR. LARUSSO: You know, Judge, just one last  
16      comment.

17                  I'm listening to the argument here and I know  
18      why I brought it up, because it was questionable in my  
19      mind and I'm thinking of a possible way of avoiding any  
20      prejudice to Mr. Haley's client or in any way prejudicing  
21      the government's case.

22                  Would the Court permit me to maybe ask him at  
23      the time what led to the board's decision and say is it in  
24      part the fact that he carved out two-and-a-half percent  
25      interest for himself? And this is the second part, that

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1 there was some effort to secretly buy the Neptune loan,  
2 and leave the third one out.

3 You know why? I was thinking, Judge, and  
4 granted, Mr. Haley, I guess it triggered in my memory that  
5 tape of the Home Depot actually discloses for  
6 Mr. Constantine's standpoint what the accusation is if I'm  
7 not mistaken. I can use that, Judge, as a basis to argue  
8 it.

9 THE COURT: That's fine. That was my suggestion  
10 at the beginning. I think your client's involvement or  
11 non-involvement with respect to Mr. Gaarn is already out  
12 there in the case and it is not necessary to bring that  
13 through this witness.

14 You can argue based upon eight weeks of evidence  
15 what evidence the government does or does not have with  
16 respect to your client's involvement in Gaarn, including  
17 the Home Depot tape. Lead him through that.

18 MR. LARUSSO: I will go out and explain it to  
19 him. I'll give him the two reasons, he will say yes, and  
20 we will move on. Would the court give me an opportunity  
21 to do that?

22 THE COURT: Yes.

23 (Pause in proceedings.)

24 (The witness resumes the stand.)

25 THE COURT: Let's bring in the jury.

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1 MR. LARUSSO: Your Honor, for the record, I have  
2 instructed him. I will try and lead him through that  
3 area.

4 THE COURT: Good. Let's bring in the jury.

5 THE CLERK: All rise.

6 (The jury is present.)

7 THE COURT: Please be seated. I apologize for  
8 the delay. We are ready to continue now.

9 Go ahead, Mr. LaRusso.

10 MR. LARUSSO: Thank you very much, your Honor.

11

12 BY MR. LARUSSO:

13 Q. Mr. D'Ambrosio, I believe we left off raising the  
14 Nerguzian or Neptune loan to Eufora. I would like to  
15 spend some time on that.

16 When do you recall the loan actually being  
17 obtained from Mr. Nerguzian's company, Neptune?

18 A. In 2009. I don't know the specific date.

19 We had some -- or CR was negotiating the loan  
20 and there was a time where Brent requested more and more  
21 legal documents and more money spent with the attorneys.

22 And I know that we did receive some advance and  
23 some bridge loans on that, on the loan. I'm not sure of  
24 the exact date that the loan was signed.

25 Q. What do you mean by advance or bridge loan?

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1 A. Because we were hoping to close on his loan a lot  
2 sooner than I guess he anticipated or we anticipated.

3 He kept on putting the loan provisions in there  
4 and more and more to his favor and I learned this  
5 afterwards.

6 And in the meantime we were out of money and in  
7 order for us to be able to make payroll, CR would  
8 negotiate with Brent to keep on getting advances every  
9 time that we needed payroll, but the contract was not  
10 signed.

11 Q. So advances were used by Mr. Nerguzian to obtain  
12 favorable terms of the loan; is that what you're saying?

13 A. I learned that afterwards, yes.

14 Q. There came a time that the loan was actually  
15 executed; is that correct?

16 A. Yes.

17 Q. And you signed that loan?

18 A. Yes.

19 Q. Did you review all of the provisions of the loan?

20 A. It was 200 pages long.

21 Q. Who prepared it?

22 A. We had some legal advice and mostly Brent Nerguzian's  
23 law firm.

24 Q. How much did it cost to prepare these legal documents  
25 for the loan?

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1 A. He made sure we covered the cost and it was  
2 approximately \$200,000 for the loan docs.

3 Q. At the time that you signed the loan documents, did  
4 you read all of the pages?

5 A. I was going off a number of things. We didn't have  
6 any other choices at that point and going off of an legal  
7 opinion that we had.

8 Q. What did you know of the provisions at the time you  
9 signed it?

10 A. I know that it was, you know, if everything kept  
11 going as planned, that this loan was a convertible note  
12 and was going to transfer into interest in the company and  
13 I think the total amount was 3.6 million was the total  
14 amount of the loan.

15 Q. And were any assets pledged in regards to the loan  
16 that you knew of at that time?

17 A. Yes.

18 Brent required us to pledge the patents as  
19 collateral.

20 Q. Had the patents been pledged prior to this time?

21 A. No.

22 Q. We heard a lot of testimony about patents from you  
23 and during this trial.

24 I'm going to show you what's marked for  
25 identification as C 273, 274, 275, 276, 277, 304, 305,

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1 272. I apologize for the order.

2 Have you seen these before?

3 A. Yes.

4 There's one I might not have seen because it was  
5 recently issued within the last year or so.

6 Q. Take a look quickly and make sure you're able to  
7 testify that, one, you examined them before appearing  
8 today and then I'll ask you what they are.

9 A. We have five methods of establishing credit and the  
10 payment card referral program, credit card referral  
11 method, and payment card sweepstakes, so eight in total.

12 Q. You kind of broken the patents down into three  
13 categories.

14 Could you explain to us please what the patents  
15 were and their importance to the business of Eufora?

16 A. So the main patent which was filed -- I think the  
17 first patent was filed in 2003, was a method for  
18 establishing credit and a third-party loan that gets  
19 loaded to a prepaid card.

20 I can go into detail.

21 Q. Explain the importance of the patents to the business  
22 of Eufora?

23 A. Well, after we launched the company, Tommy was  
24 successful in receiving about \$3 million worth of  
25 advertising media from a previous racing sponsorship and



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1 we were -- we had \$3 million worth of advertising on the  
2 AOL network.

3 And because we had a credit card -- at that time  
4 it was initially a credit card referral system.

5 Because we signed with a bank that would issue  
6 cards to individuals with great credit, we had to come up  
7 with an alternative way for people to stay in the program  
8 and have some sort of a card but that didn't have credit.

9 So the bank we were doing business with  
10 introduced us to a new division of Mastercard that was  
11 called prepaid card and this was six years before anybody  
12 heard the term prepaid.

13 So as we conducted business, what we learned was  
14 the majority of our applications -- and we had more than a  
15 million applications within the first 24 months. But with  
16 the first couple 100,000 we realized that people who go to  
17 the internet are looking for an extension of credit  
18 because they traditionally have bad credit.

19 Individuals who have good credit get  
20 solicitations in the mail. So we were selling forks in a  
21 world of spoons.

22 So we offered a prepaid card and a lot of  
23 individuals didn't want the prepaid card so we had people  
24 in the office calling them saying up, what's the reason  
25 why you were denied this card? And they said, well, it's

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1 different than a credit card. And we explained the  
2 benefits of having a prepaid card as opposed to a secured  
3 card at that time.

4 What a secured card is basically paying interest  
5 on your own money. But the best part of a secured card is  
6 it reports to the credit bureaus and that's why people do  
7 it.

8 So what we did was we realized that nobody  
9 wanted prepaid because it didn't report to the credit  
10 bureaus and if they could never segway to a prepaid card  
11 to a regular credit card, there was no reason to have  
12 prepaid.

13 So after learning that from our customers, Tommy  
14 called and I don't know how he ended up at the credit  
15 bureaus or TransUnion was the first one. I don't know if  
16 it was from a previous racing relationship or not, but we  
17 got TransUnion to listen to what we had.

18 We did a data study that we shared some data, no  
19 personal information, and after the study -- and the  
20 reason why TransUnion was willing to do the study is they  
21 wanted to be able to profile 60 million Americans that  
22 don't have credit so they can't sell their information.

23 So this would potentially be a way for them to  
24 have another source of revenue. They participated in a  
25 data study.

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1 And what we learned was there was no spending  
2 habit that could be model after. One could load \$100 and  
3 not spend it for a year, or somebody could load \$25 and  
4 spend it the next day.

5 And there was also a different behavior that a  
6 customer has when it's borrowed money as opposed to your  
7 own money.

8 When you have an extension of credit, my  
9 personal opinion is you feel like it's easier to spend  
10 somebody else's money than it is your own money.

11 So it was that and the number two thing was  
12 there was actually no extension of credit and there was no  
13 monthly financial obligation. So there wasn't a monthly  
14 due of whatever that would report to the credit bureaus  
15 monthly either positive or negatively.

16 So we went back to the drawing board and at the  
17 time we charged \$99 a year for our card because we don't  
18 charge interest. That's all the money that we made.

19 So what we came up with, as opposed to charging  
20 them \$100 upfront, what we did is we financed them the  
21 \$100 and we put it together and put a 24 month program  
22 together. We called it credit builder. It had -- so if  
23 you're putting forth a payment, it was a \$240 loan, it was  
24 \$100 for the prepaid card plus the credit fee which was  
25 \$20.

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1 And as soon as customers received our loan it  
2 acted like an installment loan as opposed to a revolving  
3 line of credit and that was something that worked really  
4 well for us and that's when Tommy started working on  
5 protecting this business method.

6 Q. The business method ultimately was patented; is that  
7 correct?

8 A. Yes.

9 So there's five patents and the original one was  
10 filed in 2003 and it covers a wide range of any type of  
11 third-party loans, whether it's cash advance, an advance  
12 on a tax return that gets loaded onto a prepaid card that  
13 basically is an infringement of one of the five patents.

14 Q. Who was primarily responsible for the preparation of  
15 these patents and the filing and retaining of them?

16 A. I had very little to do with this besides the initial  
17 idea. It was mostly Tommy.

18 Q. After the credit builder was patented, what about the  
19 other patents that you say Eufora obtained?

20 A. Well, before I switch over to the other patents,  
21 there's continuation patents which the last one has was  
22 recently filed in 2014.

23 And what is a continuation patent is we  
24 protected a certain business method and we can go back and  
25 say this was the main method of what we were protecting

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1 and we didn't have all of the details and didn't give you  
2 all of the details, but this is part of the main process.  
3 As long as it's not way outside the scope, they'll allow  
4 you to protect additional claims on the original claim.

5 Q. What were those additional aspects to the credit  
6 builder?

7 A. Tommy would need to answer those. He was the one who  
8 worked on them all.

9 Q. And the other patents you were talking about?

10 A. So the payment card referral program, that was the  
11 initial idea where individuals would get paid for everyone  
12 that they would either send an e-mail or have someone fill  
13 out an application that they directly solicited to get a  
14 card.

15 Q. And the last one?

16 A. There's two there. I'm not sure exactly what the  
17 second piece covers, and then the last one is the  
18 sweepstake program.

19 Q. Could you explain that to us?

20 A. So after we signed our deal with our first bank, they  
21 loved the concept, but they said we don't want a whole  
22 bunch of people getting credit cards because they can make  
23 money and never use the cards. They don't use the cards,  
24 they don't make money.

25 So they said you need to come up with a way to

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1     incentify customers to spend, and that's what frequent  
2     miles are and points and why you see most cards that do  
3     have reward programs to incentivify.

4     Q.    How do the sweepstakes work?

5     A.    After they told us this, Tommy called me and told me  
6     this is -- we needed to come up with something and he was  
7     at the airport and as we were working on the project we  
8     learned that one of the most successful company branded  
9     cards was the GM card.

10           And what the GM card was a certain amount of  
11     your spending, a certain percentage would allow you to get  
12     credit towards a new GM vehicle.

13           I think at the peak I think they had a million  
14     cardholders within the first 60 days or so, six months or  
15     so, and then 12 million at the peak of the program.

16           So what we learned was, and us being car guys,  
17     Americans love cars. So what we came up with was a  
18     sweepstakes program where you got an entry for every  
19     dollar or certain denomination of what you spent on the  
20     card as a sweepstakes entry.

21           And so if you were to spend \$300 on the card,  
22     you would get three entries. And so for close to -- it's  
23     probably more than a year, maybe three years, we were  
24     actually giving away a \$30,000 car each and every month to  
25     one of our cardholders.

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1 Q. How important to Eufora was the sweepstake plan?

2 A. Me, including Tommy, even others thought this was  
3 amazing, getting a certain percentage back.

4 In order for anyone to realize any real benefits  
5 from spending on a credit card, you literally have to  
6 spend tens of thousands of dollars a year and for this,  
7 this is something that literally is a life changing event  
8 for someone to receive.

9 We recorded these calls and were basically  
10 telling people you won a Mercedes. They didn't believe  
11 us. We had one lady who didn't want to tell anybody until  
12 she actually came to our office, got in the car and drove  
13 away.

14 We felt this was very powerful especially since,  
15 and maybe you guys are familiar with this, but Oprah,  
16 years ago, gave everyone in her audience a Pontiac G6 and  
17 we still talk about it today because again this is  
18 something that the average individual probably couldn't  
19 afford a brand-new \$30,000 car with no debt.

20 Q. Let me jump ahead if I could at this point.

21 Do you know what the value of these patents  
22 alone are today?

23 A. I was going to go backwards. That's a great  
24 question.

25 Both Visa and Mastercard are -- have and are

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1 infringing on this patent.

2 It has a sweepstakes program where they give  
3 away a certain vehicle depending on the spend.

4 And that one in particular was we had patents  
5 before Visa or Mastercard was even offering programs like  
6 this.

7 As relates to all of the patents, I would say  
8 the sweepstakes and the credit building patents are  
9 probably the most valuable.

10 And the reason is this gives the consumer the  
11 ability to build credit with having no credit, not to  
12 mention there's a lot of additional benefits that we  
13 included in the card that no other prepaid card had  
14 because we were creating the program and we wanted the  
15 same look and feel for our members that had a credit card  
16 and we kind of stumbled on this by accident.

17 It was kind of because we needed to create this  
18 out of necessity to fill a void. Our prepaid cardholders  
19 had the same benefits as a credit cardholder; so travel  
20 insurance, accidental death, all the same benefits that  
21 you would get with a credit card on our prepaid card and  
22 still to this day there's no prepaid card.

23 Q. Are you in sales or marketing?

24 A. Marketing.

25 Q. Sorry.



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1 I asked a few minutes ago about the value of  
2 these patents today.

3 Are you able to put a value on them? And if so,  
4 how?

5 A. Well in 2009, once we actually received the patent,  
6 and the reason why I bring up 2009 is because prior to  
7 this nobody believed that we could actually get a patent  
8 on this and banks that we talked to almost didn't believe  
9 we were reporting to the credit bureaus.

10 So as soon as we had this document was now we  
11 could enforce it and go for licensing and try to secure a  
12 bank to issue our own card.

13 But when you have a patent like this, the most  
14 prosperous kind of event is licensing. No reason to  
15 re-create the wheel. You license it to a bank and you get  
16 a royalty and collect a check. We were in talks with the  
17 top three prepaid card issuers.

18 Q. Who were they?

19 A. Netspend was one of them. We also were in talks with  
20 Tysts and then Purpose Money which was Compucredit was  
21 another one we spoke to, First Premiere, and I know I'm  
22 missing one.

23 Q. Metabank?

24 A. Metabank, that was the bank that issued a lot of  
25 different programs.

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1 But, yes, Metabank directly. They had a product  
2 that was infringing on our patent.

3 Q. You mentioned twice now there are companies, large  
4 companies, infringing on your patents.

5 Have you or anyone sought any action against  
6 these individuals.

7 A. For example I can give two examples of companies that  
8 are currently infringing.

9 MS. KOMATIREDDY: Objection, your Honor,  
10 relevance.

11 THE COURT: Sustained. This is way beyond the  
12 scope.

13 MR. LARUSSO: If I may, Judge, I'll go back to  
14 the question regarding value.

15 Q. Would you tell us what the value of the patents are?

16 A. Well, when we were negotiating the licensing deals  
17 we, depending on the bank, we would get anywhere from one  
18 to three dollars per customer per month and these banks  
19 have in the millions of customers.

20 So in my personal opinion if we were to get one  
21 of these five deals, this is a 15 to \$20 million a year  
22 company with very little overhead maintaining the business  
23 because there's really not much business when you're doing  
24 the licensing piece.

25 These type of companies that have patents that

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1 have protection for a certain amount of years usually take  
2 at least that many years times your annual run rate and  
3 sell for 10 times the earnings.

4 Q. You testified that the company borrowed money from  
5 Neptune in 2009, and you were familiar with some of the  
6 provisions but not all of the provision.

7 There came a time when you learned those other  
8 provision; is that correct?

9 A. Yes.

10 Q. In addition, did there come a time I think you  
11 testified that Mr. Constantine was on the racing circuit;  
12 is that correct?

13 A. Yes.

14 Q. Was he on the racing circuit during the time that the  
15 Nerguzian loan was being negotiated?

16 A. Yes, CR was.

17 Q. Did there come a time that Mr. Constantine returned  
18 to Eufora?

19 A. Yes.

20 Q. Approximately when if you recall?

21 A. I know exactly where I was at when I got the phone  
22 call. I don't remember the exact date.

23 Q. Approximately how long after the Nerguzian loan was  
24 actually -- if you can?

25 A. A couple months.

**D'Ambrosio - Direct/LaRusso**

5233

1 Q. What was the condition of the company at the time he  
2 returned?

3 A. Well, we found out that CR unfortunately and I  
4 wouldn't even know if I would call it negotiating because  
5 the bad terms were bad. There was a \$500,000 fee that  
6 Brent introduced and a 40 percent rev share clause that he  
7 put in the loan which means that any deal that we do for  
8 the life of the company, he would get 40 percent revenue  
9 even if the loan was paid off.

10 Q. Could you explain that in terms --

11 A. For example, if we were to get \$10 million a year in  
12 licensing, he would retain or get four million of the 10  
13 million, so he would get 40 percent of any deal.

14 Q. If a deal was consummated during the life of the  
15 loan, Mr. Nerguzian would benefit from that for the rest  
16 of the term of that deal even if the loan had been paid  
17 off?

18 A. Term of -- not the deal, the company in perpetuity.

19 Q. That's an owner's provision; is that correct?

20 A. Yes.

21 Q. Did there come a point in time when Mr. Gentry was  
22 asked to leave Eufora?

23 A. Yes.

24 Q. At the time that he was asked to leave, was he put on  
25 a paid leave of absence?

**D'Ambrosio - Direct/LaRusso**

5234

1 A. We removed him as president and CEO.

2 Q. Don't tell us the reason. Just explain what happened  
3 at this point?

4 A. Yeah.

5 He was -- yes, he was removed and I just don't  
6 know. I'm pretty sure he was not getting paid.

7 Q. Did there come a time after he had been removed from  
8 his position and asked to leave the company, that he was  
9 also removed from the board of directors?

10 A. Yes.

11 Q. Were you a member of the board of directors of  
12 Eufora?

13 A. Yes.

14 MR. LARUSSO: With the Court's permission.

15 BY MR. LARUSSO:

16 Q. At the time the decision was made to remove  
17 Mr. Gentry, Mr. Gaarn was also removed; is that correct?

18 A. Yes.

19 Q. Would it be fair to say that amongst the reasons for  
20 their discharge from the board of directors and from the  
21 company of Eufora was that, one, Mr. Gentry had carved out  
22 a two-and-a-half percent equity interest for himself?

23 A. That was one of the reasons, yes.

24 Q. Was another reason that you had come to learn in 2010  
25 that he and Gentry were part -- he and Gaarn were part of

**D'Ambrosio - Direct/LaRusso**

5235

1 a group secretly trying to buy the Neptune loan?

2 A. Yes.

3 Q. There are other reasons? Just yes or no?

4 A. Yes.

5 Q. By the way, did the board take written action in  
6 regards to the discharge of both Gaarn and Gentry?

7 A. I believe so, yes.

8 Q. Were all the reasons that we re-numerated included  
9 within the written decision of the board of directors as  
10 far as you know?

11 A. I'm sorry, one more time?

12 Q. I'll withdraw that.

13 I'm going to show you what's been marked 271.

14 Do you recognize that?

15 A. I think this is the removal of both CR and Tim Gaarn.

16 Q. Do you recognize that as the decision of the board of  
17 directors?

18 A. Yes.

19 Q. Is your signature on there?

20 A. Yes.

21 Q. Do you see other signatures on there?

22 A. Yes.

23 Mia Aroso, VP of operations and board member,  
24 Tommy Constantine and Daniel Kennedy.

25 Q. Do all four signatures appear on that document?

**D'Ambrosio - Direct/LaRusso**

5236

1 A. Yes.

2 MR. LARUSSO: Your Honor, may I ask that C 271  
3 be received?

4 MR. HALEY: May I see the document?

5 MS. KOMATIREDDY: Your Honor, I would ask if we  
6 could reserve and address this at the break?

7 MR. HALEY: I would make the same application.

8 THE COURT: We will discuss this at the break.

9 BY MR. LARUSSO:

10 Q. The decision by the board was July 12, 2010?

11 A. That's the date on the document.

12 Q. Does that correspond with your recollection?

13 A. Yes.

14 Q. Did there come a time, prior to that decision, that  
15 you learned about an effort to takeover Eufora?

16 A. Prior to that decision, yes.

17 Q. Tell me what you learned?

18 A. Well, we had two of the investors that we spoke to  
19 regularly and it was mostly Tommy's relationships.

20 And once CR -- once we uncovered the numerous  
21 reasons why CR and Tim were removed, my personal belief is  
22 that CR was very upset about that and he was no longer  
23 getting paid from us, so he basically accused us of trying  
24 to strip the investors of their equity, so he decided to  
25 tell the group of investors that our -- the hockey

**D'Ambrosio - Direct/LaRusso**

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1 players, the majority of the hockey players, Tim and CR,  
2 to try and buy the loan from our lender and foreclose on  
3 the assets and basically try to strip us of our equity.

4 Q. How would they -- that group buying the loan and  
5 moving for foreclosure strip you from your control?

6 A. Because CR had a relationship with Brent and the loan  
7 was in default and the loan was in default mostly because  
8 of Brent and CR.

9 CR would -- knew what the outstanding balance  
10 was and we were in default, so Brent had the right to sell  
11 the loan if he wanted to or foreclose on the assets.

12 And so with the group they devised a plan to try  
13 to buy the loan, foreclose on the assets, and then strip  
14 us of our equity.

15 Q. Would it be fair to say that the assets were the  
16 patents?

17 A. Yes.

18 Q. By the way, did you learn whether or not they were  
19 successful in buying the loan from Mr. Nerguzian?

20 A. Yes, they were not successful.

21 Q. Do you recall participating or being involved in a  
22 conversation between Mr. Nerguzian and Mr. Constantine  
23 regarding the activities of that group to buy the loan  
24 from him?

25 A. Yes.



D'Ambrosio - Direct/LaRusso

5238

1 Q. Where did that take place?

2 A. Tommy's office.

3 Q. Could you tell us what you heard at that time?

4 A. Well, once Tommy figured out that Brent was actually  
5 participating in this, which he was a board member so I  
6 don't know why he would be talking to other members that  
7 were just removed from the board, entertaining any type of  
8 purchase, Tommy basically was screaming at him.

9 Q. Were you present at this?

10 A. Yes.

11 Q. Tell us what happened?

12 A. And so Tommy was just screaming at him and couldn't  
13 believe that him being his friend would take a phone call  
14 from these guys.

15 And basically Brent didn't say a word and Tommy  
16 said, don't worry, we're going to get your loan paid off.

17 And Brent kind of -- he just kind of listened.  
18 And my personal opinion, I don't think that he had much of  
19 an argument because he got his hand caught in the cookie  
20 jar.

21 Q. What was the relationship between Mr. Nerguzian and  
22 Mr. Constantine at that time?

23 A. Well, up until that time they were great friends.

24 Tommy's the godfather of three of his children. Up until  
25 that point, from what I know, they had a great

**D'Ambrosio - Direct/LaRusso**

5239

1 relationship.

2 Q. By the way, after this group was unsuccessful in  
3 buying the loan, did they take any other action against  
4 you and/or the company?

5 A. Yes.

6 They sued me personally and Tommy and Mia Aroso  
7 and Brent and accused us of buying the loan without their  
8 participation.

9 Q. And would those allegations also include the fact you  
10 were trying to strip away the investor's interest in  
11 Eufora?

12 A. Yes.

13 Q. Do you know when that lawsuit was filed against you  
14 and Mr. Constantine and Mia Androzo?

15 A. That had to be 2010 after the conference call that we  
16 had with all of the investors.

17 Q. Is that call the shareholders meetings?

18 A. Yes.

19 Q. In regards to the suit, if I can jump ahead  
20 factually, you and others were successful in buying the  
21 loan to Mr. Nerguzian; is that correct?

22 A. Yes, with everybody's knowledge.

23 Q. But the suit also included Mr. Nerguzian has a  
24 defendant; is that correct?

25 A. Yes.

**D'Ambrosio - Direct/LaRusso**

5240

1 Q. Let me show you what's been marked for identification  
2 as C 90.

3 I'm trying to see if this refreshes your  
4 recollection as to the time period when the suit was  
5 actual filed against you.

6 A. Yes, this is the correct date.

7 Q. Does it help refresh your recollection of the  
8 approximate time the suit was filed?

9 A. Yes.

10 Q. When was that?

11 A. October 5, 2010.

12 Q. Does this suit in part allege the same conspiracy, to  
13 take away the investor's interest by buying the loan from  
14 Mr. Nerguzian?

15 A. I guess that's what they suggested, even though I  
16 told them from day one that wasn't the case.

17 Q. Now, a few moments ago I asked you a question about  
18 whether the loan from Mr. Nerguzian was purchased prior to  
19 the filing of the suit.

20 That did occur; is that correct?

21 A. Yes, that's correct.

22 Q. What I would like you to do is explain to the jury  
23 what you know regarding the purchase of the loan and who  
24 was involved?

25 A. So we created a reorganization plan that included

**D'Ambrosio - Direct/LaRusso**

5241

1 raising money to buyout the loan. I'm sorry, purchase the  
2 loan, not buy the loan.

3 Q. Is there a difference?

4 A. Yeah. If we were just to payoff the loan, we would  
5 still have the 40 percent cost. So we started another  
6 entity that was just going to buy the loan and then convey  
7 that to the new entity.

8 And prior to this learning about other  
9 activities, we reached out during the shareholders meeting  
10 to all of the investors and wanted to wrap everybody into  
11 the new company and have all of the investors own their  
12 shares directly.

13 Q. Let me back up.

14 You talked about the difference between buying a  
15 loan or paying off a loan?

16 A. If we were to pay off the loan.

17 Q. And you used the word 40 or the number 40.

18 Would you explain what you were referring to  
19 that at that point?

20 A. If we just paid off the loan, we would still have  
21 that 40 percent rev share in perpetuity for the life of  
22 the company.

23 If we purchased the loan as opposed to payoff,  
24 then the new entity, all those provision go away and the  
25 new group of investors would convey that to the company.

**D'Ambrosio - Direct/LaRusso**

5242

1 Q. I'm going to show you two documents marked for  
2 identification as C 161 and 162.

3 Do you recognize these two documents?

4 A. Yep.

5 This is the purchase agreement and the loan  
6 conversion agreement.

7 Q. Which one is which, identify it by number, please?

8 A. The purchase agreement is C 161, and the loan  
9 conversion is C 162.

10 Q. What are these two agreements?

11 A. This was the purchase agreement in order to buy the  
12 loan, and then the loan conversion which would basically  
13 convey the loan just as is if it were to be cash into the  
14 new company, and these were both done at the exact same  
15 time.

16 If you sign one and not the other, eventually  
17 the party could, you know, run off with the loan and not  
18 actually -- I'm sorry, run off with the assets and not  
19 convert it.

20 Q. Who are the signatures on these documents?

21 A. C 162 --

22 Q. That's the loan conversion agreement?

23 A. Yes. Dominick Volpe, myself, Mark D'Ambrosio, and  
24 Tommy Constantine.

25 Q. And the purchase agreement?

**D'Ambrosio - Direct/LaRusso**

5243

1 A. Which is C 161.

2 Q. Thank you.

3 A. Mark D'Ambrosio for Eufora Capital II, myself for  
4 Eufora and Tommy Constantine, and then we have also Brent  
5 Nerguzian for Neptune, and also Brent Nerguzian for  
6 Neptune Company Management, and then Dominick Volpe for  
7 Eufora Capital III.

8 MR. LARUSSO: Your Honor, may I ask that C 161  
9 and 162 be received at this time?

10 MS. KOMATIREDDY: Objection.

11 MR. HALEY: Your Honor, I object.

12 THE COURT: Approach.

13 (Continued on next page.)

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**D'Ambrosio - Direct/LaRusso**

5244

1 (The following takes place at sidebar.)

2 MR. HALEY: Your Honor, I don't believe a proper  
3 foundation has been laid but that's not my objection. I  
4 object to relevance and materiality.

5 I'm just not -- maybe it's me. I'm missing the  
6 point as we move into the issues in connection with  
7 legitimacy of the civil lawsuits between the two of them.  
8 I don't see it as --

9 MR. LARUSSO: If I may, very briefly, there's  
10 been an allegation that they stripped away the investors'  
11 interest by these transaction. It never happened.

12 THE COURT: I have been here for the trial. I  
13 don't need a recap.

14 I think the authentication ground has been laid.  
15 He signed it. But I don't know how much more you have.  
16 The level of detail is way too much. We spent 20 minutes  
17 on credit cards. Way too much.

18 MR. LARUSSO: I agree with the Court. I didn't  
19 anticipate that, Judge.

20 THE COURT: You have to cut him off. You have  
21 to be more focused, okay?

22 MR. LARUSSO: Maybe what I can see is if I see  
23 an area where I can lead him. I'll do the best I can.

24 THE COURT: Even though I'm allowing it in, I  
25 agree with Mr. Haley. These are side issues in the case.

**D'Ambrosio - Direct/LaRusso**

5245

I understand you want to rebut some of the things some of the witnesses said, but they are side issues. Keep that in mind.

(Continued on next page.)



**D'Ambrosio - Direct/LaRusso**

5246

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(The following takes place in open court.)  
THE COURT: 161 and 162 are admitted.  
(Defendant's Exhibits 161 and 162 in evidence.)  
(Continued on next page.)

**D'Ambrosio - Direct/LaRusso**

5247

1 Q Mr. D'Ambrosio, as briefly as you can, tell us why  
2 these two agreements were signed on the same day, June 22,  
3 2010?

4 A They were required to be signed on the same day, like  
5 I mentioned. If one was signed and the other wasn't, then  
6 potentially the purchaser would be able to have the assets  
7 and not prejudice them to the company.

8 Q So the purchase agreement give the assets to the  
9 people who purchased the loan; is that correct?

10 A Yes.

11 Q And what does the conversion agreement do?

12 A That basically converts the patent, if you will, at  
13 that time, into the new entity, which is G4 Delaware.

14 Q Does that include all the prior Eufora investors  
15 including the hockey players?

16 A At that time Eufora Capital 3 purchased the loan was  
17 going into Eufora Delaware, which is the board  
18 shareholders meeting, which we told everybody we wanted  
19 them to participate in and they chose not to.

20 So Eufora Delaware has now conveyed the patents  
21 to Eufora which, yes, everybody holds the shares of  
22 Eufora.

23 Q And then Eufora Capital becomes an investor like all  
24 the other individuals; is that correct?

25 A Yes. And their investments is the patents and paying

**D'Ambrosio - Voir Dire/Haley**

5248

1 for the payments.

2 Q Showing you what has been marked as C-279.

3 Do you recognize this chart?

4 A Yes.

5 Q What does this chart reflect?

6 A Eufora Capital 3, which is the purchaser of the loan,  
7 the intended parties and actual individuals that  
8 participated into Eufora Delaware, and Eufora Delaware  
9 into Eufora, and also all the NHL players' investment  
10 being held in AZ Eufora Partners.

11 Q Does this chart, as of the purchase agreement and the  
12 conversion agreement, reflect the interest of the  
13 investors in Eufora at that time?

14 A Yes.

15 MR. LARUSSO: Your Honor, may I ask that C-279  
16 be received at this time?

17 MS. KOMATIREDDY: What time frame?

18 THE COURT: What time frame?

19 MR. LARUSSO: June 22, 2010.

20 MS. KOMATIREDDY: I have no objection.

21 MR. HALEY: Judge, may I just have a brief voir  
22 dire?

23 THE COURT: Yes.

24 VI OR DIRE EXAMINATION

25 BY MR. HALEY:

**D'Ambrosio - Direct/LaRusso**

5249

1 Q In chart that has been presented as C-279, as  
2 reflects the ownership interests in various -- ownership  
3 in Eufora, this is your review of the books and records in  
4 order that you might testify of your own personal  
5 knowledge as to the accuracy of the document?

6 A I don't know about --

7 Q Withdrawn. Let me ask you this.

8 Who created this document?

9 A I didn't create this document.

10 Q Who did create the document, to your knowledge, this  
11 document?

12 A Tommy's attorney.

13 Q Based on not what we said, based upon communications  
14 you and he had, he created this chart?

15 A Him and I?

16 Q Yes.

17 A No. Showed to me, and he asked me if this was an  
18 actual representation of what the shareholders had and how  
19 everything went out, and this (indicating).

20 MR. HALEY: I have no objection.

21 THE COURT: C-279 is admitted.

22 (Whereupon, Defendant's Exhibit C-279 was  
23 received in evidence.)

24 DIRECT EXAMINATION

25 BY MR. LARUSSO: (Continued)

**D'Ambrosio - Direct/LaRusso**

5250

1 Q Does this chart accurately reflect the investments in  
2 Eufora as you know it today?

3 A Yes.

4 Q Can you make out on the screen to your right the  
5 chart?

6 A Yes.

7 Q What I'd like you to do is explain from your  
8 knowledge what the chart reflects.

9 A So going from right to left you have the NHL players  
10 that owned interest in AZ Eufora Partners, and you have  
11 Eufora Capital 3, which is the purchaser of the loan and  
12 the individuals that are associated or participated in the  
13 purchase of that loan into Eufora Delaware.

14 And the orange column is all the shareholders  
15 and/or individuals that owned Eufora.

16 Q When you say actual investors on the right-hand side  
17 underneath the purchase of the Neptune loan and the  
18 intended investors, what does that represent?

19 A When we decided we were going start a new company in  
20 order to purchase the loan, we needed to raise money in  
21 order to pay Brent off. And Privitello, Kaiser, Rizzi,  
22 were going to be part of that program and that group in  
23 order to buy the loan and convey it to a new company.

24 Q It says "intended investment." What happened?

25 A We learned very shortly after their investment they

**D'Ambrosio - Direct/LaRusso**

5251

1 were working with C.R. and Tim on trying to purchase the  
2 loan from the lender and foreclose on the assets. As soon  
3 as we learned that, that's when we went back to them and  
4 said, we can't accept your investment. We'd like to give  
5 you your money back.

6 Q And the actual investors, who were they?

7 A You have Sergei, the Volpe group, and that's it.  
8 Those two entities.

9 Q Those were the two, the individual and the entity  
10 that was able to secure the loan; is that correct?

11 A Yes.

12 Q And in securing the loan from Mr. Nerguzian by Eufora  
13 Capital 3, it was converted over to Eufora Delaware; is  
14 that correct?

15 A Yes.

16 Q And Eufora Delaware got equity in return for getting  
17 patents back to the company, correct?

18 A Yes.

19 Q By the way, you mentioned a few moments ago  
20 Mr. Kaiser and Mr. Privitello had sought to make an  
21 investment into Eufora; is that correct?

22 A Yes.

23 Q By the way, at the time that Eufora was operating,  
24 was there any requirement that the board of directors  
25 approve the investments before they become legal and

**D'Ambrosio - Direct/LaRusso**

5252

1 binding?

2 A Yes, the board has to approve every new investor.

3 Q I believe you testified that the board of directors  
4 did not approve these investments by Mr. Kaiser and by  
5 Mr. Privitello; is that correct?

6 A That's correct.

7 Q And why was that?

8 A Again, we learned very shortly after their investment  
9 that they were working with the other group in order to  
10 buy back the loan. We call it the Stolper's group.

11 Q What happened -- by the way, their total contribution  
12 or their total intended investment was 400,000; is that  
13 correct?

14 A That's correct.

15 Q What happened to their money after they had provided  
16 it to Eufora?

17 A It was used for what it was intended for. All  
18 investors, 150,000 for each investor went to pay down the  
19 bank at that time, and 50,000 of each 200, went to  
20 operating.

21 Q Well, did there come a time -- withdraw that.

22 Let me show you what has been received in  
23 evidence as chart number 20.

24 Do you see that?

25 A Yes.

**D'Ambrosio - Direct/LaRusso**

5253

1 Q You've seen this before testifying today; is that  
2 correct?

3 A Yes.

4 Q And there appears an entry on 12/7/09 for \$155,000  
5 down at AZ Avalon?

6 A Yes.

7 Q And AZ Avalon is not Eufora?

8 A No.

9 Q Did you know about that?

10 A Yes, I heard about it because we were on a deadline  
11 to pay off the bank, and the law office wired the  
12 incorrect amount to the wrong account.

13 Q Wrong account was AZ Avalon?

14 A Only 5,000 was supposed to go to Avalon for rent.

15 Q So AZ Avalon is the landlord for Eufora?

16 A Yes. And the correct amount was wired out the same  
17 day.

18 Q When you say "the correct amount," are you referring  
19 to 12/8/09, to Bancorp?

20 A Yes.

21 Q What is their relation to Eufora?

22 A Issuing bank. Issues our payment card.

23 Q Up here it shows on the same -- I'm sorry,  
24 December 8, '09, 50,000 to Eufora, and then it shows  
25 12/15/09, \$15,000 Constantine expenses. 12/15/09 for



**D'Ambrosio - Direct/LaRusso**

5254

1 15,000. Do you see that?

2 A Yes.

3 Q Are you aware of that expense?

4 A Yes.

5 Q Were you aware of that expense at the time that  
6 Eufora had sent the money to Carey Rodriguez Greenberg &  
7 Paul?

8 A Yes.

9 Q Who were they?

10 A The law firm defending Tommy in another case that the  
11 gentleman that sued Tommy somehow wrapped up that company  
12 in that lawsuit and subpoenaed our bank records. And  
13 Tommy was spending a lot of time speaking with this  
14 attorney and at the time was financially strapped, and we  
15 elected to participate in paying for the attorney because  
16 he was spending the time working -- the attorney was  
17 spending the time working on Eufora.

18 Q Who is "we"?

19 A "We" as in Eufora, me, Dan, made a decision to send  
20 the money over to the attorney.

21 They needed board approval in order to do that,  
22 so we got on the call, Tommy, myself and Dan.

23 Q Was there any written decision made by the board  
24 approving that?

25 A We kept pretty good records of it, so I'm pretty sure

**D'Ambrosio - Direct/LaRusso**

5255

1 we probably have records somewhere.

2 Q Have you seen any recently?

3 A No, not that I've been shown.

4 THE COURT: Let's take a 15-minute break, and  
5 then we'll go another half hour. Don't discuss the case.

6 (Whereupon, at this time the jury exits the  
7 courtroom.)

8 (Whereupon, a recess was taken.)

9 (Out of the presence of the jury.)

10 THE COURT: Before I forget, the Government was  
11 working on their jury instructions. I assume the defense  
12 has no objection to this because I'll give a copy of the  
13 indictment to the jury. And rather than be able to  
14 mention the John Does in the indictment, I want the  
15 Government to go through and put in actual names to the  
16 John Doe references.

17 Any objection to that?

18 MR. LARUSSO: No, your Honor.

19 MR. HALEY: No, your Honor. Thank you.

20 THE COURT: And can you submit that tomorrow  
21 morning?

22 MS. KOMATIREDDY: Yes, Judge.

23 THE COURT: Two other references that aren't Joe  
24 Does. (Perusing.) Co-conspirator one in paragraph 13,  
25 and Kenner, directly co-conspirator number one, known to

**D'Ambrosio - Direct/LaRusso**

5256

1 the grand jury to divert certain money --

2 MS. KOMATIREDDY: Yes, Judge, that individual is  
3 Tim Gaarn.

4 The other individuals referenced, the business  
5 partner is --

6 THE COURT: In the Sag Harbor -- no, paragraph  
7 22.

8 MS. KOMATIREDDY: That's Mr. Tesoiero. I'm  
9 happy to replace those names.

10 THE COURT: So in paragraph 22, Kenner created  
11 an operating agreement stating what it says, each  
12 25 percent owners of Ledbetter.

13 Thank you.

14 (Whereupon, a recess was taken.)

15 THE COURT: Please be seated.

16 Okay. Please bring in the jury.

17 (Whereupon, the jury at this time enters the  
18 courtroom.)

19 THE COURT: Okay. Please be seated.

20 MR. LARUSSO: May I, your Honor?

21 THE COURT: Mr. LaRusso.

22 MR. LARUSSO: Thank you.

23 Q Mr. D'Ambrosio, to your knowledge, did Mr. Privitello  
24 ever ask for his money back?

25 A No.

**D'Ambrosio - Direct/LaRusso**

5257

1 Q In regards to the money that was contributed by  
2 Mr. Kaiser and Mr. Privitello, how was that accounted for  
3 in the loan conversion agreement?

4 A It was not accounted for because their investment had  
5 to be approved by the board, and we needed to return the  
6 money.

7 Q And let me show you what has been received in  
8 evidence as C-162, position 1.3 highlighted.

9 Can you tell us what that means?

10 A This is talking about the short-term debt of both  
11 \$200,000 investments. There was two \$200,000 investments,  
12 a total of \$400,000, in short-term debt.

13 Q What does this refer to?

14 A Obligations that we needed to give those loans back  
15 to both Privitello and Kaiser.

16 Q So the money that they had sent to Eufora was carried  
17 as a short-term loan and a conversion agreement?

18 A Yes.

19 Q That's the highlighted portion, all of -- all Eufora  
20 short-term debt, approximately 400,000 as of the date of  
21 this agreement; is that right?

22 A Yes.

23 Q Now, you mentioned a shareholders meeting. Where was  
24 that?

25 A That was held at our offices in north Scottsdale.

**D'Ambrosio - Direct/LaRusso**

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1 Q Were you present?

2 A Yes.

3 Q Who else?

4 A Mr. Nash and Brian Berard.

5 Q Were any other investors able to participate in the  
6 meeting?

7 A We invited all investors, but only two showed up.

8 Q Did any participate by way of conference call?

9 A Yes, there was a handful on the call. I don't  
10 remember how many of all of the hockey players.

11 Q Do you remember at any point during the conference  
12 call the issue coming up of returning the moneys to either  
13 Mr. Kaiser or Mr. Privitello or anyone involved in the  
14 \$400,000 we've been talking about?

15 A Yes, it was mentioned again after Tommy had  
16 previously offered and wanted to wire the money back to  
17 them. It was again noted on the call that we wanted to  
18 make sure we sent them back their investment.

19 Q Were both Mr. Rizzi and Mr. Privitello present at the  
20 shareholders meeting when the money was offered back to  
21 them?

22 A I believe they were on the call, not at the office.

23 Q Okay. Do you recall an earlier occasion prior to the  
24 shareholders meeting when Mr. Constantine offered money  
25 back to either Mr. Privitello or Mr. Rizzi?

**D'Ambrosio - Direct/LaRusso**

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1 A I remember actually him calling both those  
2 individuals, and I think he e-mailed also. But I was in  
3 his office when we left messages for both individuals.

4 Q You specifically remember -- when you say "message,"  
5 what do you mean, message?

6 A They were not taking his calls, so I think he left  
7 them a voice mail saying, give us your wiring  
8 instructions.

9 Q And were you present when Mr. Constantine left that  
10 message on the telephone?

11 A Yes.

12 Q Let me show you what has been marked for  
13 identification as C-280 and C-282.

14 Do you recognize these two?

15 A Yes.

16 Q How do you recognize them?

17 A Well, I saw them in your office. This is the  
18 transcript.

19 Q This is C-282.

20 And you recognize it why?

21 A Because this is the transcript, and I seen it as I  
22 listened to this audio file.

23 Q And you dated and initialed the transcript yesterday;  
24 is that correct?

25 A Yes.

**D'Ambrosio - Direct/LaRusso**

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1 Q And the tape or the disk, you recognize it because  
2 your initials were on it?

3 A Yes.

4 Q You compared -- listened to the tape and compared the  
5 transcript?

6 A Yes.

7 Q Does that fairly and accurately represent the  
8 conversation that appears on that tape?

9 A Yes.

10 MR. LARUSSO: I ask C-280 and C-282 be admitted.

11 MS. KOMATIREDDY: No objection.

12 MR. HALEY: No objection.

13 THE COURT: C-280 and C-282 will be admitted as  
14 an aid to the transcript.

15 (Whereupon, Defendant's Exhibits C-280 and C-282  
16 were received in evidence.)

17 Q Are you able to see that, Mr. D'Ambrosio?

18 A Yes.

19 Q Can we play it, please?

20 (Audio clip played.)

21 Q Now, Mr. D'Ambrosio, you mentioned that sometime  
22 around October of 2010 -- was that suit ultimately  
23 dismissed?

24 A Yes.

25 Q Was there any impact on your company at or about the

**D'Ambrosio - Direct/LaRusso**

5261

1 time that the suit was brought?

2 A Absolutely.

3 Q Would you tell us what happened?

4 A Basically, prior to them filing suit, we tried to  
5 come to an agreement not to file suit, and the reason was  
6 because we knew this would basically be burning down the  
7 house, if you will. And anything that happened with the  
8 company, unfortunately, would get published, and that  
9 would eventually hurt the image of our company. And once  
10 they filed suit, it was kind of a kiss of death, in my  
11 opinion.

12 Q Do you know a man by the name of John Kaiser?

13 A Yes.

14 Q Do you recall a time seeing him at the offices of  
15 Eufora?

16 A Yes.

17 Q And do you recall hearing a conversation or a portion  
18 thereof between him and Mr. Constantine?

19 A Yes. He was -- to my memory, he was pretty much  
20 there the whole day. He was there for probably at least  
21 five hours, maybe more.

22 Q Did you participate in the conversation?

23 A No. I heard as I was walking back and forth. But as  
24 he was leaving, I was in the lobby as he was walking out.

25 Q Could you tell us what you overheard at that time?



**D'Ambrosio - Direct/LaRusso**

5262

1 A I got more details from Tommy afterwards.

2 Q No, just tell us what you heard at this point.

3 MS. KOMATIREDDY: Objection, your Honor.

4 What is the time frame?

5 Q Do you know what the time frame is while this was  
6 occurring?

7 A After the shareholders meeting and before the  
8 lawsuit.

9 Q Okay.

10 A And the last thing he said was, I need 20 percent,  
11 and I'm not going to take any less. And basically he was  
12 extorting us and said, I need 10 percent and Phil needs 10  
13 percent, and then he walked out the door.

14 Q By the way, after the suit was dismissed, were  
15 attorney's fees granted to you and the other defendants in  
16 the case?

17 A Yes.

18 MS. KOMATIREDDY: Objection. Relevance.

19 THE COURT: Sustained. The jury will disregard  
20 that as irrelevant.

21 BY MR. LARUSSO:

22 Q One more series of questions, if I may,  
23 Mr. D'Ambrosio.

24 Were you aware that Mr. Nash made an investment  
25 to Eufora around April of 2008?

**D'Ambrosio - Direct/LaRusso**

5263

1 A Yes.

2 Q And when were Eufora's offices actually built?

3 A The current office that we're in now, we didn't get  
4 the Certificate of Occupancy until November of 2008. And  
5 my team was working at home at the time, so we didn't rush  
6 to get in the building, especially since everybody likes  
7 working at home. We didn't get in until the beginning of  
8 2009.

9 Q And where were you working prior to the Certificate  
10 of Occupancy? Where were you and the employees of Eufora  
11 working?

12 A We were working from home, and we were waiting for  
13 the building to get finished.

14 Q So at the time of the investment by Mr. Nash in April  
15 of 2008, the office did not exist; is that correct?

16 A No.

17 Q Let me show you what has been marked for  
18 identification as C-269 and 270.

19 Do you recognize those?

20 A Yes.

21 Q What are those?

22 A Those are our offices in north Scottsdale.

23 Q What do the photographs depict?

24 A Construction and -- probably halfway complete.

25 Q Is that the Eufora building we're talking about?

**D'Ambrosio - Direct/LaRusso**

5264

1 A Yes.

2 Q It would be fair to say these photographs were taken  
3 in or about June of 2008?

4 A It seems with the date stamp and looking at -- just  
5 as I walked the property, it looks very close to probable,  
6 you know, almost being completed. But definitely a couple  
7 of more months of work.

8 Q Okay.

9 MR. LARUSSO: Your Honor, may I ask 269 and 270  
10 be received?

11 MS. KOMATIREDDY: No objection.

12 MR. HALEY: No objection.

13 THE COURT: 269 and 270 are admitted.

14 (Whereupon, Defendant's Exhibit C-269 and C-270  
15 were received in evidence.)

16 BY MR. LARUSSO:

17 Q Do you recall after you had moved into the offices  
18 around January, you said, of 2009, seeing Mr. Nash at the  
19 offices?

20 A Yes.

21 Q Approximately when?

22 A Had to be after January of 2009, but I don't know  
23 exactly what date he was in the office.

24 Q And are you aware of any commercials that were  
25 produced by your company, and if so, what information do

**D'Ambrosio - Direct/LaRusso**

5265

1 you have?

2 A Actually, Tommy was the one that produced -- I think  
3 there was a total of three commercials. I think we ended  
4 up with two commercials that were produced in 2009.

5 Q Approximately when were the discussions regarding the  
6 commercial and its production in 2009?

7 A I would say beginning to mid. I just know we were in  
8 the building, and I think we were there for a couple of  
9 months before Mr. Nash visited.

10 Q Let me show you what is in evidence as Government's  
11 Exhibit 45-B. You may not be able to see it because it is  
12 in the red highlighted area. But there is a name for  
13 December 14, 2009, Joseph Lemon.

14 Do you know who that person is?

15 A Yes, one of our employees.

16 Q And there is the same entry we saw on the chart,  
17 December 15, 2009, Carey Rodriguez Greenberg & Paul. That  
18 is the \$50,000 we talked about before, correct?

19 A Yes.

20 Q On the second page of this exhibit, December 15,  
21 2009, M-O-N-G-U-S is the first word, Solutions, LLC.

22 Do you know what that is?

23 A That's one of our employees.

24 Q I forgot one exhibit. I apologize.

25 Showing you what is marked C-268. What is this?

**D'Ambrosio - Voir Dire/Komatireddy**

5266

1 A The Certificate of Occupancy for our office which is  
2 dated November 25, 2008.

3 MR. LARUSSO: Your Honor, may I ask that C-268  
4 be received.

5 THE COURT: Any objection?

6 MS. KOMATIREDDY: May I have a voir dire?

7 THE COURT: Yes.

8 VOIR DIRE EXAMINATION

9 BY MS. KOMATIREDDY:

10 Q This document is not signed?

11 A I don't think it requires to be signed.

12 Q Answer the question. There is no signature on it?

13 A There is no signature on it.

14 Q There is no seal, raised seal, from any public  
15 official?

16 A Looks like it's a copy.

17 Q There's no raised seal from any public official,  
18 right?

19 A I don't know if this could be a raised seal or not.

20 Q Is the seal raised to you?

21 A I mentioned it was a copy.

22 MR. LARUSSO: Your Honor, may I have a sidebar  
23 on this, please?

24 THE COURT: Yes.

25 (Whereupon, at this time the following took

**D'Ambrosio - Voir Dire/Komatireddy**

5267

place at the sidebar.)

(Continued.)

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**D'Ambrosio - Voir Dire/Komatireddy**

5268

1 MR. LARUSSO: The rules doesn't require us to  
2 produce an original. There is no reason to suspect that  
3 this is not authentic.

4 If there's an objection to it because of some  
5 fabrication of doctoring, I'd be glad to know that.

6 MS. KOMATIREDDY: That is not a certified copy.  
7 I have no idea where it came from. I know what this says.  
8 There has been no authentication.

9 THE COURT: You can't authenticate a document of  
10 this nature. You can't do it.

11 MR. LARUSSO: Okay.

12 (End of sidebar conference.)

13 (Continued.)  
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**D'Ambrosio - Cross/Komatireddy**

5269

1 DIRECT EXAMINATION

2 BY MR. LARUSSO: (Continued)

3 Q By the way, at the time that you approved the \$15,000  
4 expenditure for Carey Rodriguez on behalf of  
5 Mr. Constantine, how much did Eufora owe Mr. Constantine?

6 A I know Tommy has a total of \$3 million in the  
7 company, and I know currently he's around 1.5. At that  
8 given moment I'm not sure, but I would think at least 1.5.

9 MR. LARUSSO: Your Honor, I think I failed to  
10 move to introduce the patent themselves. May I at this  
11 time close out the direct examination by asking that  
12 C-272, '73, '74, '75, '76, '77, and 304 and 305 be  
13 received in evidence?

14 MS. KOMATIREDDY: No objection.

15 MR. HALEY: Judge, I apologize.

16 THE COURT: These are the patents.

17 MR. HALEY: No objection.

18 THE COURT: The patents are admitted.

19 (Whereupon, Defendant's Exhibits C-272 through  
20 C-277, and C-304 and C-305 were was received in evidence.)

21 MR. LARUSSO: No further questions.

22 THE COURT: Cross-examination.

23 CROSS-EXAMINATION

24 BY MS. KOMATIREDDY:

25 Q December of 2009, do you remember this chart,



**D'Ambrosio - Cross/Komatireddy**

5270

1 Mr. D'Ambrosio?

2 A Yes.

3 Q You were just shown that chart, right?

4 A Yes.

5 Q And you testified about this December 15, 2009,  
6 \$15,000 payment to Carey Rodriguez Greenberg & Paul,  
7 right?

8 A Yes.

9 Q You testified that you were aware of those events,  
10 correct?

11 A Yes.

12 Q You testified that you -- let me back up.

13 You testified that it needed board approval,  
14 correct?

15 A Yes.

16 Q And you testified that you, Tommy and Dan approved of  
17 that expense, correct?

18 A That's correct.

19 Q On behalf of the board, correct?

20 A Yes.

21 Q When you are talking about Dan, you are referring to  
22 William Daniel Kennedy, correct?

23 A Yes.

24 Q That expense happened in December of 2009, correct?

25 A That's what it looks like, yes.

**D'Ambrosio - Cross/Komatireddy**

5271

1 Q And you also testified that the members of the board  
2 changed in July 2010, right?

3 A The members of the board has changed two or three  
4 times. Through the last 14 years it has changed.

5 Q And one of those times was July of 2010, right?

6 A I have to see the document.

7 Q Let's look at the document that Mr. LaRusso showed  
8 you, C-271.

9 This is an action by written consent of the  
10 members of Eufora, correct?

11 A Yes.

12 Q Look at the bottom two paragraphs on the first page.  
13 The first page.

14 A Yes.

15 Q It says there that two members of the board, C.R.  
16 Gentry and Tim Gaarn, are going to be replaced by two new  
17 members, correct?

18 A Yes.

19 Q And the two new members are Dominick Volpe and  
20 William Daniel Kennedy, correct? Right down there on the  
21 bottom of page 1.

22 A Yes.

23 Q So Daniel Kennedy is not a member of the board until  
24 July of 2010, right?

25 A I think Daniel Kennedy was a member of the board

**D'Ambrosio - Cross/Komatireddy**

5272

1 prior to that also.

2 Q Who were the members of the board in December of  
3 2009, Mr. D'Ambrosio?

4 A Without having the document in front of me, I  
5 wouldn't be able to tell you that at all.

6 Q You don't remember who the members of the board was  
7 who approved the expense?

8 A It changed course from when we initially started the  
9 company and who the investors are.

10 Q It's true that Daniel Kennedy wasn't on the board in  
11 December of 2009?

12 A No, I think he was one of the original board members.

13 Q The truth is, C.R. Gentry, who wasn't a member,  
14 didn't approve that?

15 A We didn't need him to.

16 Q But he didn't approve it?

17 A He didn't approve it.

18 Q It's a yes or no question. Did you get approval from  
19 C.R. Kennedy?

20 Can you answer the question without looking at  
21 Tommy Constantine?

22 MR. LARUSSO: Objection, your Honor.

23 THE COURT: The lawyers are not permitted to  
24 comment on the witness's demeanor in the courtroom.

25 MR. LARUSSO: Just for the record, she's

**D'Ambrosio - Cross/Komatireddy**

5273

1 standing behind me and she's looking at her, so I think it  
2 was totally inappropriate that comment was made.

3 MS. KOMATIREDDY: I apologize.

4 THE COURT: The lawyers are not permitted to  
5 comment on the demeanor of the witness. That was an  
6 inappropriate comment, and it will not happen again,  
7 correct?

8 MS. KOMATIREDDY: It will not happen again.

9 THE COURT: All right.

10 BY MS. KOMATIREDDY:

11 Q In December of 2009, you were a member of the Eufora  
12 board, correct?

13 A I've been a member since day one, yes.

14 Q So in December of 2009 you were a member of the  
15 Eufora board?

16 A Yes.

17 Q And you are here testifying today about the books and  
18 records of Eufora, right?

19 A Certain records and books.

20 Q You are testifying today about different membership  
21 interests, right?

22 A Certain member interests.

23 Q In direct, you answered questions about when  
24 different people were removed from the board and when  
25 others were added, right?

**D'Ambrosio - Cross/Komatireddy**

5274

1 A Yes. I said that Tim and C.R. were both removed,  
2 yes.

3 Q Who were the members of the board in December of  
4 2009?

5 A Like I mentioned, board members changed over the last  
6 13 or 14 years. Unless I have a document in front of me  
7 who the board members were, to the best of my knowledge it  
8 was Daniel Kennedy from day one, and I think -- I don't  
9 know if I'm allowed to say it, but I think Daniel  
10 was an -- he was a board member from day one. And I have  
11 no reason to believe he was not a board member at the  
12 time.

13 Q Were there more than three members of the board in  
14 December of 2009?

15 A Again, this is only a document that is dated for  
16 2010, so --

17 Q I'm asking you for your memory as a member of the  
18 board of Eufora. Can you tell us, were there more than  
19 three members of the board in December of 2009?

20 A I would have to have the document in front of me.

21 Q You cannot answer that without having a document  
22 today?

23 A No. I want to make sure that I was testifying to  
24 something that was truthful.

25 Q Can you tell us if there were more than three?

**D'Ambrosio - Cross/Komatireddy**

5275

1 A At that time?

2 Q In December of 2009.

3 A I don't know. Again, there is currently three, so --  
4 we don't need to have five all the time, so I can't answer  
5 that without actually having the documentation. Plus, I  
6 was not the one that was responsible for removing/adding  
7 board members. Like I said, it changed throughout the  
8 life span of the company.

9 Q Did you sign that document that you have in front of  
10 you, C-271?

11 A Yes, this is my signature.

12 Q So you were responsible for removing and adding board  
13 members?

14 A Removing, yes.

15 Q I'm going to ask you a series of yes or no questions.

16 Did you get Brent Nerguzian's approval to pay  
17 that \$15,000 to Tommy Constantine in December of 2009?

18 A I can't answer that yes or no.

19 Q Do you remember talking to Brent Nerguzian about it  
20 at all?

21 A I don't need his permission.

22 Q Do you remember talking about it with Brent Nerguzian  
23 at all?

24 A Don't need to, no.

25 Q The answer is no?

**D'Ambrosio - Cross/Komatiredy**

5276

1 A No.

2 Q Do you remember getting C.R. Gentry's permission in  
3 December of 2009 for that \$15,000 to go to Carey  
4 Rodriguez; yes or no?

5 A No, I don't think so.

6 Q Do you remember getting Tim Gaarn's approval to pay  
7 that \$15,000 to Carey Rodriguez in December of 2009?

8 A We could have. Just how -- like I said, there was  
9 only three of us that needed to decide on it, and to be  
10 honest, it is not -- nothing that -- with there being such  
11 a little amount and \$1.5 million being owed to Tommy,  
12 there was not that much question.

13 Q I'll just repeat it one more time.

14 Do you remember getting Tim Gaarn's approval to  
15 pay that \$15,000 to Carey Rodriguez in December of 2009?

16 A There was --

17 THE COURT: Mr. D'Ambrosio, you have to let her  
18 finish the question. And she asked you a yes or no  
19 question. If you can't answer it yes or no, tell her you  
20 can't answer it yes or no.

21 If there is an explanation for the yes or no,  
22 Mr. LaRusso gets to get up after she's done and ask you if  
23 you did or did not do something. That's the way it works.  
24 Okay?

25 THE WITNESS: Okay.

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1 THE COURT: What is the question?

2 Q Do you remember getting Tim Gaarn's approval to spend  
3 that \$15,000 on Carey Rodriguez in December of 2009?

4 A I'd have to answer yes or no?

5 I can't answer with a yes or no.

6 Q And finally, do you remember getting Nick  
7 Privitello's approval to spend that \$15,000 to Carey  
8 Rodriguez in December of 2009?

9 A Again, yes or no?

10 Q Yes or no.

11 A I can't answer it yes or no.

12 Q But you remember talking to Tommy and Dan?

13 A Yes.

14 Q And --

15 THE COURT: It's 4:30. We'll break for the day.  
16 We'll reconvene at 9:30.

17 Don't discuss the case. Don't form an opinion.

18 Have a good night.

19 (Whereupon, at this time the jury exits the  
20 courtroom.)

21 MR. MISKIEWICZ: Your Honor, before the witness  
22 leaves, we have excerpts of that board of directors  
23 meeting we intend to --

24 THE COURT: Hold on for a second (addressing the  
25 witness).



Proceedings

5278

1 MR. MISKIEWICZ: -- that we intend to impeach  
2 him with.

3 I referenced the fact there was an earlier board  
4 of directors meeting where Mr. Gentry was released. So to  
5 not waste time tomorrow morning, we ask that he be  
6 permitted to listen to the recording today before we leave  
7 for the evening, and then we can pick up from that point  
8 on tomorrow. That's all.

9 THE COURT: Mr. D'Ambrosio, with the assistance  
10 of Mr. Oliveras, I'll ask you to listen to that recording  
11 either tonight or tomorrow morning, okay?

12 THE WITNESS: Okay.

13 (Witness exits.)

14 THE COURT: Ms. Komatireddy, I cannot tell you  
15 how disturbing it is to me that after I specifically,  
16 specifically told your trial partner, Mr. Miskiewicz, that  
17 it was unacceptable for him to refer to a witness looking  
18 at Mr. Kenner -- and we had a long discussion about that.  
19 And after last week when I warned all of the attorneys not  
20 to make comments, yet you made the decision to do that  
21 again.

22 I was absolutely floored by the fact that you  
23 did that specifically after I told your trial partner he  
24 could not do that. I don't understand that.

25 Are you not able to follow the instructions of

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1 the Court?

2 MS. KOMATIREDDY: I apologize, your Honor. I  
3 don't have a good excuse. I just apologize.

4 May I ask for some guidance on this?

5 THE COURT: Yes. What do you want to know? I  
6 thought my instruction was clear.

7 MS. KOMATIREDDY: Your Honor, your instruction  
8 was clear. It's not the way I expected it. It came out  
9 wrong.

10 But my question is, it seems to me as a matter  
11 of impeachment that one should be able to impeach a  
12 witness, not taking cues from the defense, would be  
13 permitted to ask the witness before you answer that  
14 question: Did you look at the defendants?

15 THE COURT: No.

16 MS. KOMATIREDDY: So that the demeanor would be  
17 on the record.

18 THE COURT: No. In your summation -- you  
19 comment on a witness's demeanor on summation. If you want  
20 to comment on his credibility to the jury and say, "Do you  
21 believe he was looking at Mr. Constantine?" -- you can  
22 argue to the jury. You can take into account, and the  
23 jury can reject or not, or accept, what you say was the  
24 demeanor of the witness, whether or not the witness was  
25 looking for cues from the defendant. That's the proper

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1 way to make a commentary. That is argument on the  
2 witness's demeanor.

3 To inject your belief, your belief, during his  
4 testimony that that is what he's doing is inserting you in  
5 the testimony, as your argument is being asserted in the  
6 middle of him trying to answer a question.

7 And, no, you can't ask a witness, "Are you  
8 looking at Mr. Constantine or not?" You don't understand  
9 how ridiculous that question can be.

10 If defense counsel or the Government did it, to  
11 ask each witness to comment on their demeanor -- no,  
12 that's not the way it is done. Everyone sees the demeanor  
13 of the witness. It is what it is.

14 If I believed a witness was doing anything  
15 improper, I could instruct the witness not to do  
16 something. But that's not what happened today. The  
17 witness wasn't doing anything improper.

18 Even if a witness looked at a defendant, as long  
19 as the -- even if he looked at him before answering a  
20 question, there would be nothing to instruct the witness  
21 on. That would simply go to their demeanor.

22 But that's argument, and it cannot happen again.  
23 I cannot stress that again.

24 And your -- the way -- you are asking this  
25 witness way too many questions. When you are not getting

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1 a response that you want, you are asking him again the  
2 same question and the same question. And I don't want  
3 that to happen tomorrow morning.

4 I understand he may be a hostile witness for the  
5 Government, but that doesn't mean that -- you know, if he  
6 answers the question "I don't remember," unless you show  
7 me a document and -- showing me who the membership was,  
8 that is six, seven or eight questions regarding the fact  
9 that he doesn't remember. He said he doesn't remember,  
10 yet he's asked four or five questions.

11 If he has a document reflecting the membership,  
12 then show it to him. And if you believe he should  
13 remember as a board member, that goes to the jury.  
14 Doesn't go to four or five questions to him.

15 I don't want a repeat of that tomorrow morning.

16 MS. KOMATIREDDY: Yes, that should be clarified,  
17 your Honor, in the case.

18 THE COURT: Now, on the issue of the board  
19 minutes, C-271, you said you wanted to have a discussion  
20 about it. I don't know what is in there, but there is  
21 something in there that --

22 MR. LARUSSO: The Government was crossing him on  
23 one of the paragraphs that was missing.

24 THE COURT: I thought there was some other  
25 paragraph in there that said something about misconduct.

Proceedings

5282

1 MR. HALEY: There's a great number of  
2 paragraphs, Judge, that speak in terms of our conclusions,  
3 whereas, and things of that nature. But I don't believe  
4 Mr. Constantine can offer that as an exhibit to be marked  
5 for identification.

6 THE COURT: Okay.

7 MR. LARUSSO: Your Honor, I can suggest to the  
8 Court tomorrow on redirect, the signature page is signed  
9 by Mr. Daniel Kennedy, who was being made a new member by  
10 this. And he signs this with the implication that he was  
11 a member already.

12 So there is a portion I'm going to ask that it  
13 be received, and clearly it would be that signature page  
14 along with the other signature page. I don't really need  
15 anything more. If there is a problem, I can redact all of  
16 it other than that portion.

17 THE COURT: Is there anything problematic on the  
18 signature pages?

19 MR. LARUSSO: Not that I know of, Judge. But  
20 maybe we can deal with this tomorrow. I'll look at this  
21 more closely, and I'll remove everything but the  
22 signatures. That would be fine with me.

23 THE COURT: I just want to mark for the  
24 record -- we forgot to give the jury the letter for his  
25 employer, but we'll mark it for the record as a copy.

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1           The one we gave to defense counsel last week was  
2           marked as Court Exhibit F, the final version. Catholic  
3           Charity, his employer, Court Exhibit G. And there was  
4           another one marked as Court Exhibit H.

5           Are there any other issues tomorrow?

6           What will you do with your witnesses,  
7           Mr. LaRusso?

8           MR. LARUSSO: Thank you for bringing that up,  
9           Judge.

10           Mr. Semple is flying in from his vacation. I'm  
11           hoping that he'll have landed and I'll be able to talk to  
12           him tonight. I hope that it's all right by the Court to  
13           put him on and make sure we get him done, so not be a half  
14           hour late. We should get him done by the morning.

15           THE COURT: Who is this?

16           MR. LARUSSO: Mr. Semple.

17           THE COURT: No.

18           You want to interrupt this witness to do  
19           Mr. Semple; is that correct?

20           MR. LARUSSO: I'm afraid if his cross is too  
21           long, we'll not get to him and he'll not be able to get  
22           back to his family.

23           THE COURT: But you have no issues with  
24           Mr. D'Ambrosio?

25           MR. LARUSSO: No.

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1 THE COURT: So you will not finish tomorrow  
2 then.

3 MR. LARUSSO: I hope to finish Mr. Semple and  
4 Mr. D'Ambrosio tomorrow.

5 THE COURT: Do you have any other witnesses?

6 MR. LARUSSO: I have one other witness flying  
7 in. Mr. DeVries is flying in and he doesn't look like  
8 he'll be in. And Mr. Kennedy I can't say yes or no. I  
9 just can't say.

10 I'll e-mail the Government and let them know.  
11 If I don't finish, then I'll finish Wednesday.

12 Judge, I apologize. This has been a very  
13 difficult case for many reasons. Putting in the kind of  
14 time to be ready from day to day. I know the Court wants  
15 to finish this on Tuesday and hopefully have summations  
16 and charge on Thursday.

17 I don't know if -- I'm trying to get some sleep,  
18 trying to be able to abide by the Court's schedule, but is  
19 there any possibility that we can put the summations off  
20 until next week? I don't know if the Court is willing to  
21 entertain that application.

22 I haven't spoken to counsel or the Government  
23 regarding it. It's just that to put this together with  
24 all the testimony that we've had and all the difficult  
25 issues, I'm just afraid I'll be rushed into doing

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1 something. I have a lot of help. I will not deceive the  
2 Court into thinking I don't. There are a lot of people  
3 helping me, but --

4 THE COURT: That would be essentially taking --  
5 if we were to finish the case tomorrow or after a few  
6 hours on Wednesday, we could have another two days off.

7 And I remind you we have jurors -- one juror I  
8 know has something July 16th, but I have to allow enough  
9 time for them to deliberate. That may sound far off.

10 As you know, I try to make every accommodation,  
11 but that is an extraordinary thing to do, to tell the  
12 jurors come back in five days.

13 Is anybody counting the weeks? I think we're on  
14 week nine. For me to tell the jury -- I'm writing letters  
15 to employers. They have to get back to work.

16 MR. LARUSSO: I understand.

17 THE COURT: So you have to be prepared to go  
18 forward this week.

19 MR. LARUSSO: I understand.

20 THE COURT: Okay?

21 MR. LARUSSO: Yes.

22 THE COURT: And also, as we're doing the  
23 indictment, nobody has discussed the forfeiture part of  
24 the case if there is a conviction.

25 Is there any discussions about the forfeiture



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1 part of the case?

2 MS. KOMATIREDDY: We discussed this at the  
3 outset. I believe the defense is waiving a jury for that  
4 so we can have a hearing at a later time.

5 MR. HALEY: Yes, your Honor.

6 THE COURT: I can only imagine what the jury's  
7 reaction to that will be. It would not be a short  
8 proceeding.

9 So, okay. Mr. Haley?

10 MR. HALEY: Your Honor --

11 THE COURT: I'm sorry. Is the Government  
12 anticipating a rebuttal case at this point? We have some  
13 ways to go, but based on what you know now?

14 MR. MISKIEWICZ: I don't believe so. We'll make  
15 a final decision tonight about one potential witness, but  
16 I don't believe so.

17 THE COURT: Go ahead, Mr. Haley.

18 MR. HALEY: I was actually working on my  
19 summation this weekend as I was collating my exhibits. I  
20 do note that the C.R. Gentry spreadsheet where we had  
21 concluded Mr. Kenner's testimony out of an agreement which  
22 was admitted in evidence, but we haven't given it a Kenner  
23 exhibit number. I realized this at the close of my case.

24 THE COURT: Which document?

25 MR. HALEY: The C.R. Gentry spreadsheet, your

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Honor.

THE COURT: Yes.

MS. KOMATIREDDY: We have it as Kenner 228, your Honor.

MR. HALEY: Okay. Thank you for the Government's assistance.

I missed it through the myriad of exhibits.

THE COURT: I know I gave a limiting instruction. We may not have had the number at that time.

All right. Anything further?

MR. LARUSSO: No, your Honor.

THE COURT: Have a good night.

MR. LARUSSO: Thank you, your Honor.

THE COURT: If the Government can create a redacted version of the indictment to put in the John Does and take out the forfeiture part and the forfeiture statutes and the forfeiture headings on the front.

MR. LARUSSO: Your Honor, I'm sorry, that includes the alias, I assume?

THE COURT: Yes.

(Whereupon, the proceedings were adjourned until Tuesday, June 30, 2015, at 9:30 a.m.)

1	WITNESSES	5288
2		
3	PHIL KENNER	5103
4	RE CROSS-EXAMINATION	5104
5	BY MR. MISKIEWICZ	
6	RE CROSS-EXAMINATION	5115
7	BY MR. LARUSSO	
8	RE CROSS-EXAMINATION	5154
9	BY MR. HALEY:	
10	M A R K D ' A M B R O S I O	5160
11	DIRECT EXAMINATION	5160
12	BY MR. LARUSSO:	
13	VOIR DIRE EXAMINATION	5173
14	BY MS. KOMATIREDDY:	
15	DIRECT EXAMINATION	5174
16	BY MR. LARUSSO: (Continued)	
17	VI OR DIRE EXAMINATION	5248
18	BY MR. HALEY:	
19	DIRECT EXAMINATION	5249
20	BY MR. LARUSSO: (Continued)	
21	VOIR DIRE EXAMINATION	5266
22	BY MS. KOMATIREDDY:	
23	DIRECT EXAMINATION	5269
24	BY MR. LARUSSO: (Continued)	
25	CROSS-EXAMINATION	5269

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1 BY MS. KOMATIREDDY:

3 EXHIBITS

4 Government Exhibit 104 in evidence 5112

5 Government Exhibits 506 A, 506A.T and 506 B 5114  
6 and 506 B.T in evidence

9 Defense Exhibit C 311 in evidence 5117

10 Defense Exhibit 326 in evidence 5121

11 Defense Exhibits 306, 307, 307 A, 308, 308 A, 5133  
12 309 and 310 in evidence

13 Defense Exhibit C 158 in evidence 5145

14 Defendant's Exhibits K-239, K-240 and K-241 5155  
15 were received in evidence

16 Defendant's Exhibit C-265 was received in 5167  
17 evidence

18 Defendant's Exhibit C-267 was received in 5174  
19 evidence

20 Defendant's Exhibit C-279 was received in 5249  
21 evidence

22 Defendant's Exhibits C-280 and C-282 were 5260  
23 received in evidence

24 Defendant's Exhibit C-269 and C-270 were 5264  
25 received in evidence

1 Defendant's Exhibits C-272 through C-277, and 5269 5290  
2 C-304 and C-305 were was received in evidence  
3  
4  
5 Defendant's Exhibits 161 and 162 in evidence 5246  
6  
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<p><b>\$10</b> <sup>[1]</sup> - 5233:11 <b>\$100</b> <sup>[4]</sup> - 5224:2, 5224:20, 5224:21, 5224:24 <b>\$100,000</b> <sup>[1]</sup> - 5186:10 <b>\$11</b> <sup>[1]</sup> - 5137:18 <b>\$125</b> <sup>[1]</sup> - 5131:5 <b>\$125,000</b> <sup>[1]</sup> - 5170:13 <b>\$15</b> <sup>[3]</sup> - 5129:5, 5129:25, 5137:12 <b>\$15,000</b> <sup>[9]</sup> - 5253:25, 5269:3, 5270:6, 5275:17, 5276:3, 5276:7, 5276:15, 5277:3, 5277:7 <b>\$155,000</b> <sup>[1]</sup> - 5253:4 <b>\$20</b> <sup>[2]</sup> - 5224:25, 5231:21 <b>\$20,000</b> <sup>[2]</sup> - 5176:3, 5176:11 <b>\$200,000</b> <sup>[4]</sup> - 5186:22, 5220:2, 5257:11 <b>\$240</b> <sup>[1]</sup> - 5224:23 <b>\$25</b> <sup>[1]</sup> - 5224:3 <b>\$250,000</b> <sup>[1]</sup> - 5122:24 <b>\$290,000</b> <sup>[3]</sup> - 5116:9, 5118:12, 5119:11 <b>\$30,000</b> <sup>[2]</sup> - 5227:24, 5228:19 <b>\$300</b> <sup>[1]</sup> - 5227:21 <b>\$300,000</b> <sup>[1]</sup> - 5192:16 <b>\$350,000</b> <sup>[3]</sup> - 5118:18, 5119:5, 5119:8 <b>\$40,000</b> <sup>[1]</sup> - 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